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ABSTRACT

The Child Support Enforcement Amendments of 1985, the most significant child support enforcement measures taken by the United States Federal Government since the Child Support Enforcement Program was created in 1975, are discussed in this document. Also discussed are the history of enforcing child support payments and methods for dealing with absent parents. The first chapter provides a general overview of the problems involved in getting parents to keep up with child support payments, and how the Child Support Enforcement Program can help. In Chapter 2, the organizational structure of the Child Support Enforcement Program is described. Chapter 3 deals with the intake process, touching on sources of cases, intake procedures and issues, and the conducting of intake across state lines. Locating absent parents is the focus of Chapter 4, and paternity establishment procedures are detailed in Chapter 5. Chapter 6 concerns assessment of child support obligations, including a description of formulas and guidelines. Procedures for establishing court orders for child support are detailed in Chapter 7, and information about methods of enforcing child support orders is supplied in Chapter 8. Chapter 9 provides guidelines for collecting and distributing child support payments. An appendix summarizes the legislative history of child support enforcement, and a glossary is included. (SKC)

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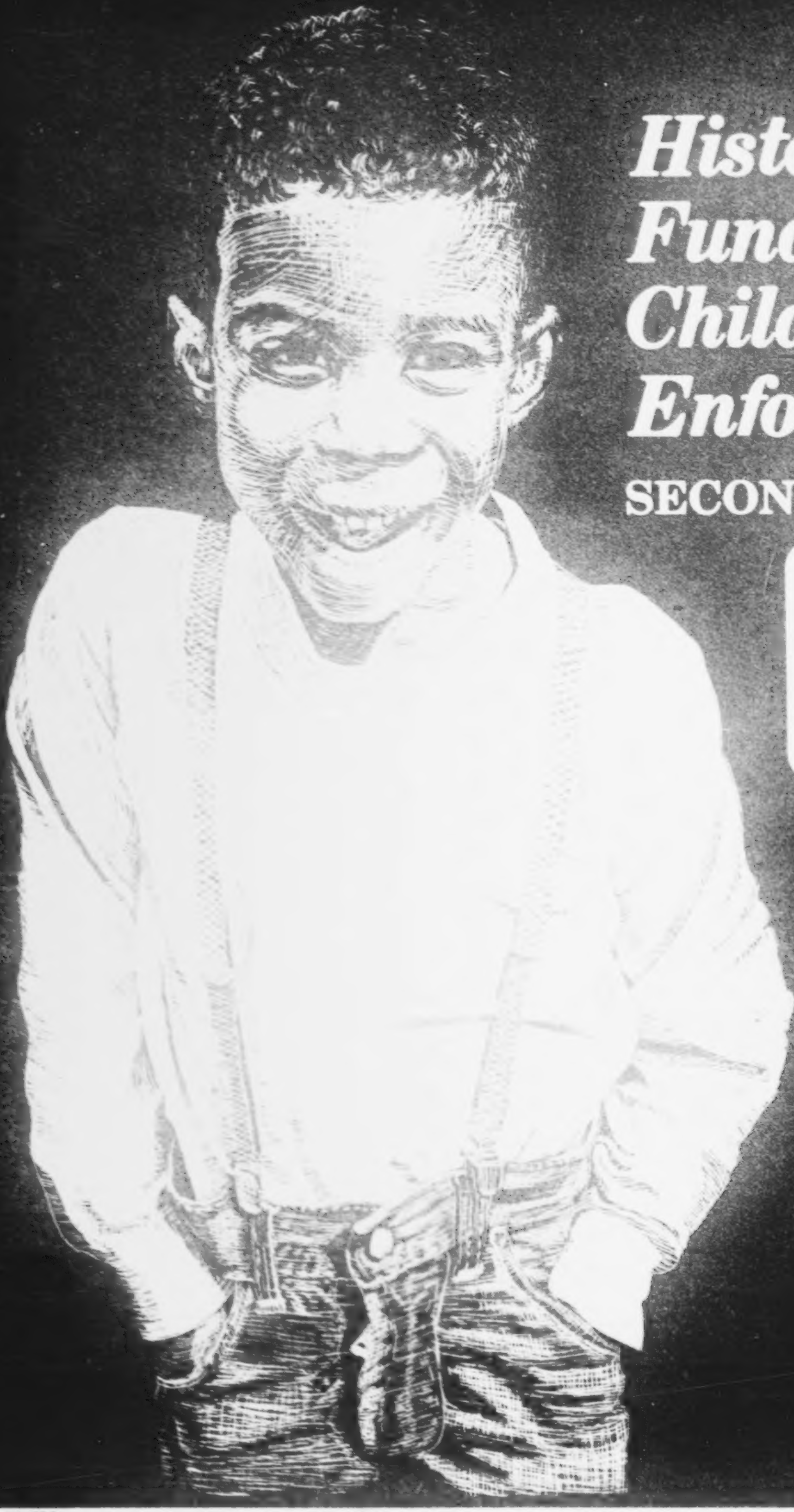

History and Fundamentals of Child Support Enforcement

SECOND EDITION

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SECOND EDITION

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September 1986

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CHAPTER 1

The Child Support Enforcement Problem

INTRODUCTION

In 1984, Congress enacted Public Law (P.L.) 98-378, better known as the Child Support Enforcement Amendments of 1984. These are the most significant child support enforcement measures taken by the Federal Government since Congress enacted P.L. 93-647 in 1975 to establish Title IV-D of the Social Security Act, thereby creating the Child Support Enforcement Program. Both the 1975 implementing legislation and the 1984 Amendments were inspired by dramatic changes in our social structure and the concomitant costs in welfare and related government assistance programs. This chapter provides some background about the child support problem and assesses the effectiveness of the Child Support Enforcement Program as it completes its first decade.

THE CHILD SUPPORT PROBLEM

Almost 50 years have passed since Congress created the Aid to Families with Dependent Children (AFDC) Program--the first step toward guaranteeing financial support to dependent children and their families. Since that time, there have been significant social and economic changes in this country that have contributed to the need for a strong and effective child support enforcement effort nationwide.

In 1948, 25 per 1,000 children under 18 were receiving AFDC. By 1973, there were 113 AFDC children per 1,000 under age 18 in the United States. Investigation of this dramatic increase in the AFDC rolls reveals a drastic change in the nature of the AFDC recipients nationwide since the program began. Initially, death of the father was the main basis for eligibility. However, the reason increasingly has become the absence of the father from the home. Currently, almost nine out of every ten children who are receiving AFDC have a living parent absent from the home.

Current statistics reveal that only about 13 percent of today's families can be categorized as traditional, i.e., the "typical" American family with a working father and a mother who is a full-time homemaker. For over a decade, the fastest-growing family structure has been the one-parent unit. This phenomenon reflects escalating divorce rates, the increase in marital separations, and the growing number of mothers who do not have husbands. The Census Bureau estimates that nearly half of the children born during 1982 will spend a "significant period" of their lives in a single-parent family.[1]

From 1970 to 1980, divorce rates climbed from 47 to 109 divorces per 1,000 married couples, a figure indicating that at least half of all new marriages will end in divorce. The dimension of the nonsupport problem becomes even more staggering when one considers the vast numbers of couples who simply separate without obtaining a divorce. From 1960 to 1983 the number of separated individuals who head a household in which children reside increased 83 percent.[2] Over 18 million children now live in homes of divorced or separated parents.

By far the most significant rate of increase in single-parent households has occurred among the never-married mothers. Between 1970 and 1983, the number of never-married mothers increased by 377 percent. By 1983, one-fourth of all single parents were in this category. Of the 7.6 million women heading single-parent families in 1984, 2.1 million had never been married. Of particular concern is the rate of out-of-wedlock births among teenagers. During 1979, almost 550,000 children were born to mothers from 15 to 19 years of age, and about half of these babies were out-of-wedlock births. Many of these mothers do not complete high school and lack marketable skills. Often they enter a pattern of unemployment, poverty, welfare dependency, and repeated pregnancies.[3]

Unfortunately, these statistics are economically as well as sociologically significant because the absence of a parent usually means a lower standard of living for the family. Poverty rates are determined on an income-per-family basis--as opposed to other income (or unemployment) statistics, which are determined per capita. In 1983, the poverty rate for the Nation as a whole was 15.2 percent. It was 40 percent for single-parent families headed by white women and 60 percent for those headed by black women.[4] For families headed by black women, the number is now near 75 percent. The composite poverty rate for all families headed by females with no husband present was more than 3 times that for married couple families.[5] In short, society is faced with an increasing number of dependent children in female-headed households with marginal incomes.

These women, left alone to care for the children, frequently cannot cope adequately on their own. It is difficult to care for children while working. Those who do work usually cannot command a sufficient salary to meet the needs of their families. Without financial support from absent fathers, mothers very often are forced to seek public assistance.

Of the 8.4 million women living with a child under 21 years of age whose father was not living in the household, 59 percent were awarded child support. However, of the four million women due child support payments in 1981, only 47 percent received the full amount; 25 percent received partial payments; and 28 percent received nothing.[6] Consequently, increasing welfare costs in the United States are, to a considerable extent, a problem of the nonsupport of children by their absent parents.

In addition, there have been national demographic changes affecting the financial support of children. Ours has become an extremely mobile society, with most individuals relocating to different geographic locations several times during their lifetimes. This ease of movement has made collection of ordered child support increasingly difficult. It also complicates the process of establishing paternity for those children born out-of-wedlock. An alleged father or absent, legally responsible parent can move to a different area and attempt to evade his or her responsibility without difficulty. In fact, prior to the establishment of the Child Support Enforcement Program, it was hard and frequently impossible to pursue an uncooperative parent who simply moved across a county or State line. Location efforts had low success rates, and jurisdictional issues made enforcement unlikely.

The combined force of these sociological, economic, and demographic trends reinforced the need for a uniform, nationwide approach for returning the responsibility for children to their parents.

THE CHILD SUPPORT ENFORCEMENT PROGRAM

Since the early 1950s, Congress has shown a persistent and increasingly forceful initiative to promote a viable Child Support Enforcement Program. The first legislative effort pertained specifically to child support enforcement officials and the provision of AFDC benefits for children deserted or abandoned by a parent. By 1975, participating in legal action against an absent nonsupporting parent was mandatory--no longer optional--for the AFDC applicant.

Efforts to pass effective child support legislation began to intensify in the mid- to late 1960s, culminating in the 1974 passage of Title IV-D, the current comprehensive Child Support Enforcement Program. Prior to this time, P.L. 89-97, passed in 1965, legally sanctioned the use of Social Security records to locate parents--a process that many States had employed informally for years. Upon enactment of this legislation, States could gain access to Social Security records through the Social Security Administration (SSA) to obtain recent addresses and places of employment of absent parents. This law was followed by the 1967 passage of P.L. 90-248, providing States access to Internal Revenue Service (IRS) records to obtain addresses of absent parents. This Act, which amended Title IV of the Social Security Act, included provisions that required State welfare agencies to establish a single unit whose mission was to collect child support and to establish paternity for children on public assistance. States also were required to work cooperatively with each other under child support reciprocity agreements and with courts and law enforcement officials.

Nevertheless, by 1972, it was clear from the rapid increase in numbers of AFDC recipients that the 1967 amendments had not produced the intended results. In light of their relative ineffectiveness, the U.S. Senate Finance Committee, under the chairmanship of Russell Long, began working in early 1971 to compile data on AFDC costs and child support enforcement. The Committee intended to use this information in developing new Social Security amendments to strengthen child support enforcement.

A group of Senators, most notably Long, Mondale, and Nunn, continued to push for a comprehensive Child Support Enforcement Program, in spite of unsuccessful attempts in 1972 and 1973. The Senators apparently envisioned legislation that would define clearly the functions and operational parameters for the State agencies that had been mandated by law in 1967 to collect child support and establish paternity. Other desired outcomes were generally to strengthen the Federal regulatory and oversight role, to establish parent locator services at the Federal and State levels, and to establish funding standards and procedures.

Despite repeated failures to get bills through both houses, the child support provisions which had been deleted from legislation a year earlier were incorporated into H.R. 17045 in late 1974. The provisions passed both the Senate and the House on December 20, 1974. President Ford signed the bill into law on January 4, 1975, as P.L. 93-647, the Social Security Amendments of 1974. Part B of P.L. 93-647 enacted Title IV-D of the Social Security Act, which created the Child Support Enforcement Program.

Since 1975, Congress has examined a number of legislative initiatives and, almost every year, passed bills that address such things as funding to States, additional child support collection remedies, and mandated State recordkeeping and enforcement activities. Appendix A provides a chronological legislative history of Congress' activities, including the Child Support Enforcement Amendments of 1984, which embody the most comprehensive requirements on State child support enforcement practices since the Program was established.

Benefits of the Child Support Enforcement Program

The millions of dollars that the Child Support Enforcement Program collects each year represent a direct benefit to children and families as well as to taxpayers. The Program is one of very few government undertakings that helps needy families while also saving tax dollars. As of October 1, 1985, the Federal Government matches 66.65 percent of costs incurred by States in the administration of the Program; matches 85.69 percent for costs related to the development of management information systems; and permits the States to retain as much as 50 percent of support monies collected to offset the State costs of AFDC.[7] As an added incentive to operate effective programs, States and localities involved in the collection and enforcement of child support obligations are entitled to retain an additional 6 to 10 percent of both AFDC and non-AFDC collections to be used for whatever purposes governing officials deem appropriate.[8]

In addition to its direct revenue-generating aspects, the Child Support Enforcement Program produces indirect financial benefits through the provision of services to non-AFDC families who, without income from child support, might be forced to turn to public assistance. Similarly, through Program efforts, sufficient support is collected on behalf of some AFDC families to eliminate their dependence on welfare and related assistance programs.

Although its primary role is a financial one, the Child Support Enforcement Program clearly offers social, economic, and medical benefits to children, as well as fostering in families a sense of parental responsibility, heritage, and self-esteem.

Establishing paternity for a child born out of wedlock and having that parent contribute financial assistance for the child's upbringing (that otherwise might come from public funds) benefit society and the child. In addition to providing an alternative source of income for the family, absent parents may be able to provide their children with access to such "social entitlements" as Social Security benefits, pension benefits, veterans' benefits, and other rights of inheritance. The children also gain social and psychological advantages from having legally identified parents and a sense of family heritage. Perhaps the most important of these advantages is escaping the prejudices often held against children who cannot identify their fathers.

Another benefit of establishing paternity is that fathers and children no longer will be deprived of the knowledge that a paternal relationship exists. A legally established relationship is a first step in creating a psychological and social bond between a father and his child. Further, it is in the child's best medical interest to know who his or her parents are. A significant number of diseases, illnesses, birth defects, and other abnormalities are passed to children by their parents. This knowledge of medical history is the only way of predicting a child's susceptibility to some medical disorder before it occurs.

Current Status of the Child Support Enforcement Program

The Child Support Enforcement Program can point to significant achievements. These include the development of a Federal organizational and operational capability through OCSE to support State IV-D programs; the building of a comprehensive policy and regulatory base; and the provision of high quality services and products to States and jurisdictions operating the IV-D Program.

Clearly, the best measure of the Child Support Enforcement Program's nationwide effectiveness during its brief history is the steady growth in collections: present AFDC collections more than quadruple the amount collected in 1975. From FY 76 through FY 84, more than $13.2 billion in child support payments have been collected, $5.7 billion of that amount on behalf of families receiving AFDC. The total amounts collected each year have increased steadily from $500 million in FY 76 to $2.4 billion in FY 84. In the same period of time, the paternity of over 1.2 million children was established under the Child Support Enforcement Program and legally enforceable support orders were established in about 3.3 million cases. In addition, from FY 80 to FY 84, nearly 4 million absent parents were located.

These achievements have been realized while actually saving money for State and local governments. For example, in FY 84, for every dollar spent on AFDC and non-AFDC activities, $1.38 was collected on behalf of AFDC families and used to reimburse State and local governments; $1.66 was collected per dollar on behalf of non-AFDC families. This cost-effective operation, combined with incentive payments from the Federal Government, provided over $350 million in revenue to State and local treasuries during the year.[9]

Of particular significance is the wide diversity of performance among States and localities. The ability of some States to operate highly effective programs shows that there is potential for all States to generate additional revenue. Exhibit 1.1 provides a State-by-State review of AFDC and non-AFDC cost-effectiveness for FY 84.

Examining these discrepancies in performance shows that the potential for recovering additional revenue is staggering. If all of the States currently performing below the national average increased their cost-effectiveness to the national average, the additional welfare savings for the taxpayer would be almost $300 million per year. If the Program as a whole could recoup 25 percent of the AFDC costs, it would be collecting more than four times what it now collects.[10]

Current collection and administrative expenditure growth trends suggest that program performance can be improved while administrative costs are contained. The U.S. Bureau of the Census estimates that over $3 billion in unpaid child support obligations exist nationwide.[11]

As noted at the outset of this chapter, the Child Support Enforcement Amendments of 1984 reflect a clear Congressional mandate for States and local jurisdictions to adopt improved procedures, management practices, and legal remedies. The Act's key provisions require critical improvements in four major areas:

- States must improve their available enforcement techniques (income withholding, liens, etc.) by passing legislation and implementing practices that have proved effective in other States.
- Federal audits will measure performance as well as compliance with legislation.
- Interstate child support enforcement will be made more effective through the enactment and implementation of statutes providing for income withholding across State lines and through expedited processes.
- States will be required to provide child support enforcement services equally to welfare and nonwelfare families.

Each of these four general areas is discussed in detail in Appendix A, Legislative History, and references to the various provisions of the legislation appear throughout the following chapters of this publication. The importance of the Child Support Enforcement Amendments cannot be underestimated. Implementing the various requirements will be a major undertaking for all State programs and a significant challenge to Program personnel at all levels. Most importantly, however, this new legislation represents an opportunity to improve the efficiency and effectiveness of this Program--and, thus, to save even more tax dollars while providing even better service to millions of American children and their families.

FOOTNOTES

/1/ U.S. Bureau of the Census, March 1984 U.S. Census (Washington, DC: U.S. Bureau of the Census, August 1984).

/2/ U.S. Bureau of the Census, Population Characteristics Series P-20, No, 372. In: Marital Status and Living Arrangments: March 1981 (Washington, DC: U.S. Bureau of the Census, June 1982), Table D.

/3/ U.S. Bureau of the Census, March 1984 U.S. Census, op. cit.

/4/ U.S. Congressional Research Service/Congressional Budget Office, Children in Poverty (Washington, DC: U.S. Govt. Print. Off., May 1985).

/5/ Asland Thorton and Deborah Freedman, The Changing American Family. Population Bulletin 38(4), 1983 (Washington, DC: Population References Bureau, Inc.).

/6/ U.S. Department of Health and Human Services and Department of Commerce, Survey on Child Support and Alimony (Washington, DC: U.S. Govt. Print. Off.).

/7/ As of October 1, 1985, the 70 percent rate will begin to decline, falling to 66 percent beginning October 1, 1989. 48 USC 655.

/8/ Note that the amount of this incentive payment may not exceed twice the amount awarded to the State on account of collections for AFDC cases. 42 USC 658.

/9/ U.S. Department of Health and Human Serives, Office of Child Support Enforcement; Child Support Enforcement: 9th Annual Report to the Congress for the Period Ending September 30, 1984 (Washington, DC: U.S. Govt. Print. Off., 1985).

/10/ Id.

/11/ U.S. Bureau of the Census, March 1984 U.S. Census, op. cit.

Exhibit 1.1

STATE PROGRAM COLLECTIONS FOR FISCAL YEAR 1984*

	AFDC Collections	Non-AFDC Collections	Total Collections
National Average	**$1.38**	**$1.91**	**$3.29**
Alabama	0.82	0.30	1.11
Alaska	0.40	1.99	2.39
Arizona	0.33	1.84	2.18
Arkansas	1.08	0.55	1.63
California	1.23	1.08	2.31
Colorado	1.02	0.70	1.72
Connecticut	1.71	1.65	3.36
District of Columbia	0.50	0.39	0.90
Delaware	1.66	2.97	4.64
Florida	1.74	0.69	2.43
Georgia	1.44	0.37	1.80
Guam	0.93	0.59	1.52
Hawaii	1.03	1.33	2.37
Idaho	1.53	0.34	1.86
Illinois	1.31	0.99	2.31
Indiana	2.84	0.44	3.29
Iowa	3.87	1.82	5.69
Kansas	1.73	0.59	2.32
Kentucky	0.78	1.96	2.75
Louisiana	0.74	1.22	1.96
Maine	3.01	0.73	3.75
Maryland	1.31	2.84	4.15
Massachusetts	1.81	1.74	3.55
Michigan	2.40	4.46	6.86
Minnesota	1.61	1.33	2.94
Mississippi	1.64	0.13	1.77
Missouri	1.52	1.11	2.64
Montana	1.78	0.49	2.27
Nebraska	1.08	4.68	5.76
Nevada	0.52	1.39	1.91
New Hampshire	1.07	4.09	5.16
New Jersey	1.25	3.30	4.55
New Mexico	1.10	0.62	1.71
New York	0.77	1.27	2.03
North Carolina	1.49	1.17	2.65
North Dakota	1.61	0.70	2.31
Ohio	1.88	0.08	1.95

*Ratio of Collections to Total Administrative Costs

	AFDC Collections	Non-AFDC Collections	Total Collections
National Average	**$1.38**	**$1.91**	**$3.29**
Oklahoma	1.01	0.35	1.36
Oregon	0.98	2.03	3.01
Pennsylvania	1.48	6.89	8.37
Puerto Rico	0.35	24.26	24.61
Rhode Island	2.11	1.25	3.36
South Carolina	1.97	0.52	2.49
South Dakota	1.80	0.53	2.33
Tennessee	0.92	2.25	3.17
Texas	0.94	0.83	1.77
Utah	1.59	0.42	2.01
Vermont	2.26	0.18	2.44
Virgin Islands	0.37	3.11	3.48
Virginia	1.50	0.24	1.74
Washington	1.54	0.89	2.43
West Virginia	1.48	0.04	1.52
Wisconsin	2.21	1.04	3.25
Wyoming	1.76	0.82	2.58

Data from Child Support Enforcement: 9th Annual Report to the Congress for the Period Ending September 30, 1984 (Washington, DC: U.S. Govt. Print. Off., 1985).

CHAPTER 2

Organizational Structure of The Child Support Enforcement Program

INTRODUCTION

Established in 1975, the Child Support Enforcement Program is a federally supervised effort to obtain child support payments from parents who are legally obligated to pay support for dependent children. The Office of Child Support Enforcement (OCSE), under the U.S. Department of Health and Human Services (DHHS), supervises the Program. However, it is managed principally by States or local agencies.

OCSE's mission is to provide leadership in the planning, development, management, and coordination of the Child Support Enforcement Program and activities authorized and directed by Title IV-D of the Social Security Act and other pertinent legislation. These programs and activities enable States to enforce support obligations owed to children by locating absent parents, establishing paternity when necessary, and obtaining child support.

The Senate Finance Committee, which authored the Federal legislation that established the Child Support Enforcement Program, issued the following statement on the scope and intent of the Program:

> The Committee believes that all children have the right to receive support from their fathers. The Committee bill is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer, but more important, as an effective support collection system is established, fathers will be deterred from deserting their families to welfare and children will be spared effects of family breakups.[1]

This chapter explains the relationships between the Program's Federal and State components. It identifies the roles and responsibilities at each level of the Program and describes the cooperation required to accomplish the objectives of the Program.

FEDERAL ROLES AND RESPONSIBILITIES

Public Law (P.L.) 93-647 originally defined the roles and responsibilities of OCSE, its organizational structure, and its lines of accountability. OCSE was charged with assisting State and local child support enforcement agencies in developing, managing, and operating effective programs. The Secretary of the Department of Health, Education, and Welfare [now the Department of Health and Human Services (DHHS)] was given primary responsibility for the Program and for establishing a separate organizational unit, i.e., OCSE, to operate it. In a 1986 reorganization carried out by the Secretary of DHHS, Otis R. Bowen, OCSE became part of the newly established Family Support Administration (FSA). FSA's Administrator serves also as the Director of OCSE.

The responsibilities of OCSE are to:

- Establish standards for State program organization, staffing, and operation
- Establish regulations and standards for Federal Financial Participation (FFP) in support of State child support enforcement programs
- Review and approve State plans for the Program
- Evaluate State program operations by audits not less often than every 3 years to determine whether States conform to Federal requirements
- Certify cases for referral to the Federal courts to enforce support obligations
- Certify cases for referral to the Internal Revenue Service (IRS) for support collections
- Establish and operate a Federal Parent Locator Service (FPLS)
- Certify amounts of past-due child support obligations to the Secretary of the Treasury for collection
- Provide technical assistance to States in developing systems for collecting child support and establishing paternity and assist them with report procedures
- Maintain records of program operations, expenditures, and collections
- Submit an annual report to Congress.

OCSE Projects and Activities

OCSE is required by P.L. 98-378 to provide technical assistance to States. Since the early years of the Program, various forms of technical assistance have been provided to every State and to many local jurisdictions. For this purpose, OCSE operates the Federal Parent Locator Service, produces and distributes child support-related publications, administers research and demonstration projects, provides training and disseminates information to the public, and assists and monitors State and local child support enforcement programs. Each of these activities is discussed below.

Federal Parent Locator Service. One requirement of P.L. 93-647 was that OCSE establish a Federal Parent Locator Service to assist State and local programs in determining the whereabouts of parents and alleged fathers who were not financially supporting their children. In March 1976, this information exchange became operational, providing States with information from other Federal departments and agencies maintaining address data. The automated system is supported by a nationwide telephone and computer network that provides location information under strict administrative safeguards and security procedures. The actual process of locating absent parents is discussed in detail in Chapter 4.

Publications. Through a nationwide clearinghouse and library, OCSE disseminates news and information regarding child support issues. Effective program techniques and management practices are discussed in OCSE's monthly Child Support Report and its periodic Abstracts of Child Support Techniques. In addition, OCSE publishes the semiannual Information Sharing Index, a listing of all child support enforcement materials, including research reports. OCSE conveys its policies and procedures, including proposed and final Federal regulations, in Action Transmittals. Items of interest to State and local IV-D agencies are conveyed through Information Memoranda. (These last two publications are issued as necessary.) OCSE periodically releases program data in tabular form in a publication entitled Child Support Enforcement Statistics and informs Congress of Federal and State child support enforcement activities through the Child Support Enforcement Annual Report to Congress. The Reference Center also carries State procedural manuals, publications on topics and issues relating to child support, research and demonstration projects, exemplary practices, and other reference materials. Many of these materials are available at no cost, on request, from the National Child Support Enforcement Reference Center, 6110 Executive Boulevard, Room 820, Rockville, MD 20852.

Research and Demonstration Projects. About $450,000 annually is available under Section 1110 of the Social Security Act to enable OCSE to employ contracts and grants for research and demonstration projects and to develop new methods and techniques. In addition, the Child Support Enforcement Amendments of 1984 authorize OCSE to award grants to encourage and promote improved interstate establishment and enforcement. These grants, awarded to States beginning in Federal fiscal year (FY) 1985, authorized $7 million in FY 1985, $12 million in FY 1986, and $15 million in subsequent years.

In FY 1984, OCSE funded research and demonstration projects with the following purposes: to design a method for estimating Medicaid savings; to quantify the national collections potential; to develop models for assessing and updating child support award levels; to develop standards for parentage testing laboratories; to study the effects of child custody arrangements on child support payments by absent parents; to research the costs and benefits of paternity establishment; to improve interstate child support collections; to investigate the practical aspects of modern paternity testing; to design a method for estimating cost avoidance in child support enforcement; and to study court systems to improve the collection of court-ordered support. In addition, OCSE funded various demonstrations of administrative improvements in child support enforcement case processing techniques.

Training and Public Information. To provide more efficient and effective services to States and to improve management effectiveness, OCSE has contracted with several organizations to train child support enforcement professionals in proven methods of operation and to interpret the Program to interested outside parties and the general public. Included in this effort are the National Council of Juvenile and Family Court Judges, the National Institute for Child Support Enforcement, the National Conference of State Legislatures, the American Bar Association, and the National Governors' Association. The services of these five organizations are discussed below:

- National Council of Juvenile and Family Court Judges. Founded in 1937, the National Council of Juvenile and Family Court Judges (NCJFCJ) is the oldest judicial membership organization in the nation. Council membership comprises judges, referees, commissioners, and masters. Court administrators, clerks, attorneys, and others active in juvenile and family law may join as associate members. Membership services include continuing judicial education at the University of Nevada and other sites around the country; consultation and technical assistance; State and regional training programs; and a variety of publications, including the Juvenile and Family Law Digest and the Juvenile and Family Court Journal. The Council also provides research consultation services through its Research Division at the National Center for Juvenile Justice in Pittsburgh, PA.

The training division of the NCJFCJ, the National College of Juvenile and Family Law (NCJFL) conducts over 100 continuing judicial education programs annually for professionals in the juvenile and family court field in cities throughout the United States and on the Reno campus of the University of Nevada. In 1985, over 12,000 people were trained. The faculty is composed of judges as well as internationally and nationally known experts in the fields of juvenile and family law, child development, sociology, psychology, medicine, and administration.

From 1979 through mid-1986 NCJFCJ provided judicial education in child support enforcement under contract to OCSE. Training included presentations targeted to judicial participants at National, State, and local conferences; incorporation of child support enforcement issues in courses offered at the NCJFL in Reno; and articles on child support enforcement in periodicals targeted to the judicial community.

- National Institute for Child Support Enforcement. The National Institute for Child Support Enforcement (NICSE) was established in March 1979, to develop and present training courses tailored to the needs of Federal, State, and local personnel participating in the Child Support Enforcement Program, and to assist with technology transfer among the States. In its 6 years, NICSE has developed 11 formal training courses and conducted over 500 deliveries to more than 10,000 child support enforcement professionals. NICSE has developed 16 publications and distributed over 80,000 of them to the field. This publication record makes the Institute a major source of printed information on the Child Support Enforcement Program. NICSE's working relationship with OCSE and to State and local programs also has facilitated the dissemination of information. Through its Lecture Presentation Series, NICSE staff and affiliated consultants have made over 175 presentations to audiences as large as 800 persons.

  Now in its seventh year of operations, NICSE continues to offer training courses, materials development, and lectures for the Child Support Enforcement Program. In addition, a new technical assistance project will apply Institute expertise in training development and delivery to help improve State training capabilities. NICSE also will offer seminars for new State IV-D administrators and develop videotapes in support of various OCSE information campaigns.

- National Conference of State Legislatures. The National Conference of State Legislatures assists State legislatures in developing and enacting legislation beneficial to their child support enforcement programs. Toward this end, it conducts research, provides information, and coordinates expert testimony concerning the experience of other States that have enacted similar laws. The Conference has published A Guide to State Child Support and Paternity Laws and A Legislator's Guide to Child Support Enforcement in collaboration with The National Institute for Child Support Enforcement, in addition to the State Child Support Legislation and the 1984 Federal Amendments, a 54 Jurisdictional Analysis.

- American Bar Association. The American Bar Association (ABA) has contracted with OCSE to operate a child support project as a component of its National Legal Resource Center for Child Advocacy and Protection. Under this contract ABA provides training to attorneys, both inside and outside of the

IV-D Program; produces related written materials; trains court and paralegal personnel on interstate support enforcement; and provides technical assistance to bar groups, legislative committees, State child support commissions, and individual attorneys. In addition, ABA has worked with the National Conference of State Legislatures to develop model legislation such as the Model Interstate Income Withholding Act.

- National Governors' Association. The National Governors' Association (NGA) provides a vehicle for influencing the development and implementation of national policy and a forum for addressing State problems. The Association works with Congress on Federal and State policy issues, which include the Child Support Enforcement Program. This relationship enhances the sharing of program knowledge among the States. Specifically, NGA contracted with the Child Support Enforcement Program to provide a forum for identifying and resolving issues for top-level policy makers at the State level related to implementing Federal law in State child support enforcement agencies. In addition, NGA develops and disseminates a variety of material on child support enforcement to key-level managers and policy makers.

In addition to such contracted services, training and public awareness activities are conducted by OCSE Central and Regional Office staff.

Urban Assistance Initiative. In 1981 OCSE began targeting large urban jurisdictions for extra attention and technical assistance. Through urban assistance, Central and Regional Office specialists have worked with States and local staff to provide onsite analysis and detailed recommendations to requesting officials. Urban assistance projects have been successful in helping to increase collections and improving operations in San Francisco, California; Chicago, Illinois; Essex County, New Jersey; Baltimore, Maryland; New Orleans, Louisiana; and Detroit, Michigan. Projects currently are ongoing in St. Louis, Missouri and New York City, New York.

Oversight and Assistance to States

The Federal Program must ensure that each State meets the mandated requirements and provide the support and technical assistance needed for their compliance. OCSE initially established standards for State program organization, staffing, and operation. These initial standards have evolved to reflect the growth and development of the child support enforcement effort, but the Federal program is still responsible for seeing that these standards are met. One method of accomplishing this is through the annual review of each State's program, which shows how the State complies with the legislated requirements for organization, operation, and services provided.

Audits of State and local programs. In addition to the annual review of State programs by the Regional Offices, OCSE conducts regular audits of all programs. Legislative and Program changes have affected the focus and frequency of these audits; however, the Federal Program is still charged with carefully evaluating how States operate, what they do with monies that are collected, and how they spend money allocated for program costs. Under the Child Support Enforcement Amendments of 1984, the audit will evaluate program effectiveness and efficiency. For this reason the focus of Federal audits is changing to measure performance as well as compliance with State plan requirements. If the audit determines that a State is not in substantial compliance with the requirements, the Federal Program can penalize the Program by applying a 1 to 5 percent sanction against its AFDC funding. If the noncomplying State files and complies with an acceptable corrective action plan, the Federal program will suspend imposition of the penalty. Under the 1984 Amendments annual audits are no longer required, but programs must be audited at least once every 3 years.

Incentives. Another way the FFP has become involved with program effectiveness and efficiency is through financial incentives. To encourage performance-based programs, the 70 percent rate for FFP will be further reduced in coming years. To encourage automation by the States, 90 percent matching funds were made available for developing and installing Statewide, comprehensive automated systems to improve required procedures. Additionally, for the first time this same reimbursement rate was extended to computer hardware acquisitions.

The 1984 Amendments eliminated the preexisting 12 percent incentive payments based on collections related to public assistance cases; instead, States will receive a minimum of 6 percent of both public assistance and non-public assistance collections. In a State with very cost-effective operations, the rate could be as high as 10 percent.

Beginning in FY 1985, grants were made available to States for funding research and demonstration projects on innovative methods of interstate enforcement and collection. These grants can help States meet the performance requirements relating to interstate enforcement and collection.

STATE ROLES AND RESPONSIBILITIES

Child support enforcement on the State level involves the specific functions devoted to securing payment of financial support from parents with dependent children. Although the way this is accomplished varies among programs, there are common State requirements mandated by law. These include establishing a case file (during an "intake" process), locating absent parents, establishing paternity, assessing financial responsibility, establishing an order of support, collecting and distributing funds, and enforcing support orders.

When the Child Support Enforcement Program became a nationwide requirement, the States were permitted to determine the best way for their programs to be administered. This was intended to allow for differences in organization, population distribution, and other demographic variances. For this reason, the ways programs are organized, where they are placed in the State's organizational hierarchy, what relationships exist between the child support enforcment program and other State agencies, and policies and procedures that are followed continue to differ significantly.

The State or local agency administering the AFDC program is commonly known as the IV-A agency. Generally this is part of the State welfare agency; it is separate from the child support enforcement agency. The AFDC program, like the Child Support Enforcement Program, is locally or State administered pursuant to Federal requirements. Child support-related requirements are imposed on the welfare agency as well as the child support agency by Congress through statute and by DHHS through regulations. These regulations ensure that all procedures used and information obtained result in enforceable cases. All applicants for welfare must assign to the State any rights to support. In addition, the welfare agency must gather child support-related information as part of the eligibility process. An applicant's unwillingness to provide such information can have an immediate adverse effect on his or her financial assistance eligibility.

To meet Federal requirements and to receive Federal funds, the State child support enforcement program as well as the AFDC program must also have an approved State plan. This is a document indicating State compliance with Federal requirements. The duties required of the State Child Support Enforcement programs are detailed in 45 CFR 302 et. seq. They specify that all States must:

- Participate financially in the Program
- Establish a State plan that will be in operation continuously and on a Statewide basis.
- Establish or designate a single and separate organizational unit, to be known as the IV-D agency, to administer the State plan
- Submit amendments to the State plan to reflect any new or revised Federal statutes or regulations or any significant changes in State law, organization, or policy of the IV-D agency
- Maintain accounts and supporting records to assure that claims for Federal funds are in accordance with applicable Federal requirements
- Maintain records necessary for proper and efficient operations and ensure correctness and verification of such reports
- Include in the State plan a copy of State statutes or regulations that establish procedures for establishing paternity, establishing child support obligations, and enforcing support obligations
- Bond all employees who have access to or control over funds collected by the program
- Provide a control, such as separation of functions, over individuals who handle cash payments and who keep accounting records of the monies collected
- Publicize the availability of support enforcement services
- Attempt to establish paternity for children born out of wedlock, unless to pursue this would create a potentially harmful or threatening situation to the child or custodial parent
- Collect support payments made on behalf of individuals who are receiving financial aid under the State's IV-A plan
- Provide paternity determination and support collection services to individuals who apply for AFDC services
- Enter into written agreements for cooperative arrangements with appropriate court and law enforcement officials whose services are needed to meet the mandated program requirements
- Establish a State Parent Locator Service using the Federal Parent Locator Service and all relevant resources in the State and in other States
- Cooperate with other States in establishing paternity, locating absent parents, securing compliance with support obligations, and carrying out any other required functions identified under Title IV-D

- Comply with Federal program operation, organizational, and staffing requirements
- Make support payments to the resident parent, legal guardian, or responsible or custodial relative
- Establish obligations owed to the State by absent parents as support rights are assigned to the State
- Determine the amount of such obligations following the amount specified in a court order or, if no order exists, in accordance with a formula that meets criteria outlined in 45 CFR 302.53
- Reduce support obligations, dollar for dollar, as support payments are collected
- Distribute, according to mandated requirements, all monies collected
- Establish and use a formula for determining the amount of support an absent parent is required to pay when no court order exists.
- Send an annual notice of support collections to AFDC recipients
- Collect past-due support from Federal tax refunds and by arranging for the withholding of unemployment compensation
- Implement State laws to improve program effectiveness
- Secure medical support information and establish and enforce medical support obligations
- Meet requirements outlined in 45 CFR 307.11 in order to recieve 90 percent Federal financial participation for establishing computerized support enforcement systems.

As noted above, States were given much flexibility in their approach to organizing and administering programs that would meet the federally mandated requirements. This is clearly evident by comparing State programs throughout the Nation. For example, many programs are placed beneath the organizational umbrella of social services or welfare agencies, while others are aligned with law enforcement departments, courts, or State attorneys' offices. Some programs are administered by a centralized, State-level office while others are decentralized with program administration occurring primarily at the local or county level. As programs develop and evolve and as dynamics within States change, reorganizations become necessary to ensure compliance with regulations and to improve the efficiency and effectiveness of program operations.

Regardless of the way a program is administered or where it is placed organizationally within the government structure, all child support enforcement programs require a good working relationship with other public agencies and with other organizations and individuals in the private sector. For full compliance and for successful operations, information and cooperation must be obtained from these other resources. Therefore the child support enforcement worker should maintain good public relations for the program and open communication with other agencies. These issues are dealt with in more detail in following chapters discussing sources of referrals and case information, interagency communications, location techniques, and enforcement processes requiring the assistance of other programs and offices.

Because child support enforcement programs have existed in some States longer than in others and because of the differences in demographics and resources among geographic areas, the level of program development has not been consistent. Although many offices have had sophisticated automated systems in place for years, others still have manual operations for many of the functions. With the development of computer technology in information management and the availability of Federal funds to offset the costs of implementing these systems, the mid-1980s have brought many changes designed to reduce cost and improve outcomes.

OVERVIEW OF THE CHILD SUPPORT ENFORCEMENT PROGRAM FUNCTIONS

It is clear from this chapter that knowledge of both the roles and the responsibilities of the Federal Program is necessary for the State child support enforcement worker to be effective. The relationship between the two is marked by cooperation: the Federal OCSE provides leadership and technical assistance, while the State enforces Federal mandates.

The steps a child support case goes through are complex. Exhibit 2.1 gives an overview of these steps, which are described briefly below.

- Intake. The intake function includes all activities performed to open a child support case. The referral and application forms are screened to determine if the information provided is complete and accurate. Appropriate contacts are made to secure all needed information and to set up the case record.

- Locate. Locate involves all activities performed to locate absent parents or their assets. Local, State, and Federal services are used; if all efforts are unsuccessful these cases are classified inactive and are reviewed annually.

- Establishing Paternity. This step is necessary if paternity has not been previously determined. Although voluntary cooperation is first attempted, sometimes court action must be initiated. If the court is unable to establish paternity, either the case is closed or additional evidence is sought.

- Assessing Financial Responsibilities. To assess the financial responsibility of the absent parent, the child support unit analyzes both the ability of the parent to pay and the needs of the children involved.

- Establishing an Order of Support. Sometimes an order of support can be established with the cooperation of the absent parent; other times a court hearing is necessary. If the parent must be summoned to court and does not appear, the order may be issued by default.

- Enforcement. If a case becomes delinquent, it moves into the enforcement function where activities are undertaken to secure payments using procedures available by law; these range from collection letters to fines and incarceration.

- Collection and Distribution. This function consists of recording and monitoring payments and disbursing money collected. Many innovative ways to make this process more effective are being tried, including the use of private credit bureaus, night deposit boxes, and drive-up windows.

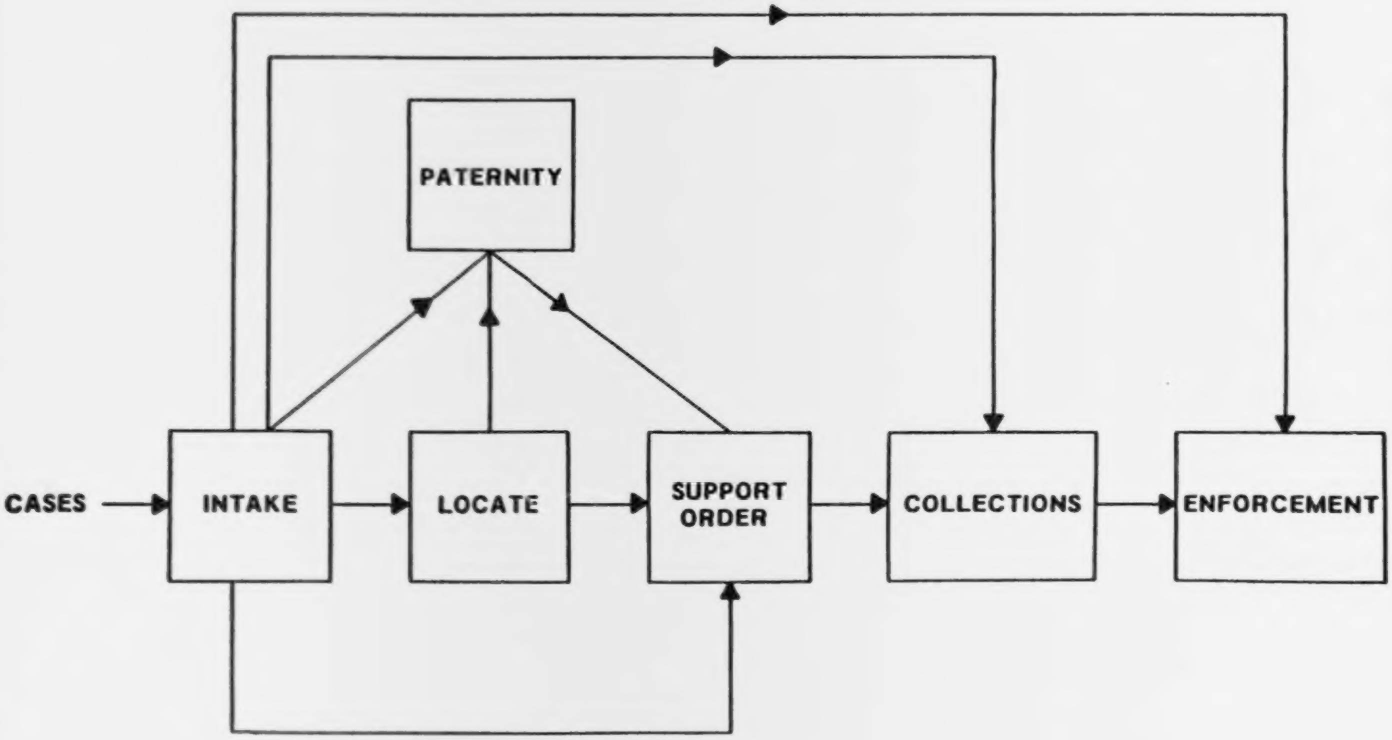
The remaining chapters describe each of these child support enforcement functions in detail.

FOOTNOTE

/1/ U.S. Senate Committee on Finance, 94th Congress, First Session, Child Support Data and Materials (Washington, DC: U.S. Govt. Print. Off., 1975), p. 3.

Exhibit 2.1

Basic Activity Model for Representative IV-D Program


PATERNITY
CASES
INTAKE
LOCATE
SUPPORT ORDER
COLLECTIONS
ENFORCEMENT

CHAPTER 3
The Intake Process

INTRODUCTION

This chapter describes how a case is established in the Child Support Enforcement Program--a process known as "intake." Intake begins when the IV-D agency receives a request for services or a referral from the welfare agency; initial actions establish the case, which will then be processed through the system.

Child support cases may originate from several sources and may be processed in various ways depending on the status of the family and the policies of the State office. However, the goals in all intake processes are the same: to collect verifiable information, to determine the legality and eligibility of the case, and to gain the trust and cooperation of the client. This initial intake process is critical. The quality and amount of information on which a case is established affect how expeditiously and successfully support can be collected.

SOURCES OF CASES

The intake process differs slightly depending on how cases come into the Title IV-D agency. There are four major sources of cases: (1) public assistance cases, (2) non-public assistance cases, (3) transfer cases that originate in other States or jurisdictions, and (4) cases that involve more than one agency because the absent parent and dependent child live in different States. Although each of these types presents unique problems, it is important to keep in mind that the intake goal is the same for each, i.e., gathering information that will lead to enforceable support orders.

Public Assistance Cases

A public assistance child support case is one that seeks support for a child or children for whom financial aid is being paid by a State's AFDC program or Title IV-E foster care program. Assignment of any rights to support is a condition of eligibility for AFDC. Therefore, whenever a case is determined eligible for AFDC, the welfare agency that administers this program must refer the case to the State's child support enforcement program for recovery of any support obligations and for provision of any other necessary services.

The AFDC program has an intake process much like that of the State child support enforcement program. The application process involves assignment of rights to support and gathering information about the parent or parents whose support is needed. Although AFDC workers are concerned primarily with determining financial eligibility, they also are required to solicit and refer certain information to the child support enforcement agency; AFDC case referrals are generated from this intake. However, if the initial interview was conducted by an AFDC caseworker, all needed information may not have been acquired or might be out of date. Therefore, often a follow-up interview by a child support enforcement caseworker is needed.

Child support enforcement cases can be processed several ways after an AFDC referral has been received, depending on the amount of information available, the whereabouts of the absent parent, and the policies and procedures followed in a specific office. The child support enforcement agency may require no initial contact with the caretaker relative if sufficient information has been provided to move the case to the next step toward support collection. Some agencies, however, routinely conduct their own intake interview to corroborate or supplement the referral information. An advantage to this approach is that additional information may be obtained and time may not be lost by initiating actions on information that is either incorrect or not current. The disadvantage is that the routine scheduling of these interviews may be repetitious if the original information was sufficient. A third approach, and the one most commonly used, is to schedule follow-up intake interviews when the need is indicated by the referral.

Regardless of the approach, it is important to determine that public assistance is being received prior to initiating a case. This distinguishes the intake process for public assistance cases from that for non-public assistance cases.

Assignment of rights to support. As a condition of eligibility for AFDC, an applicant must assign to the State all rights to support from any other person. This assignment applies to any member of the family for whom assistance is being sought or to whom payments will be made. Essentially, this assignment allows the State to recoup money paid out to a family through the AFDC program by having the absent parent make support payments through the child support enforcement agency rather than directly to the custodial parent and the family. If the support payments exceed the AFDC grant, the family may be able to go off welfare, saving taxpayer dollars. The custodial parent may complete the assignment of rights to support in the welfare agency or the child support enforcement agency, depending on the particular procedures within the State.

Cooperation. Cooperation with the child support enforcement agency is required of all public assistance clients, and both the AFDC recipient and the caseworker should understand the regulations concerning it. An intake worker may have to explain this to an applicant if he or she is unwilling to relinquish information. The client must supply any information that could aid in:

- Identifying and locating the parent of a child for whom assistance is requested
- Establishing paternity for illegitimate children
- Obtaining support for the applicant and dependent children

Failure to cooperate may result in the denial of the custodial parent's share of assistance. In these cases, benefits to the child(ren) are made through a third party, designated as a protective payee.

However, if the cooperation will result in emotional or physical harm to the children, good cause for failure to cooperate may be determined. A finding of good cause should be a rare occurrence.

The burden of showing a likelihood of harm to the children must be met by the custodial parent. The basic grounds for a determination of good cause are:

- Physical or emotional harm to the child for whom support is to be sought
- Physical or emotional harm to the parent or custodial relative with whom the child is living of such nature or degree that it reduces such person's capacity to care for the child adequately.

In addition, the State or local IV-A agency may determine that proceeding to establish paternity would be detrimental to the child for whom support is being sought if at least one of the following circumstances exists:

- The child for whom support is sought was conceived as a result of incest or forcible rape
- Legal proceedings for adoption are pending before a court of competent jurisdiction
- The applicant or recipient currently is being assisted by a public or a licensed private social agency to resolve the issue of whether to keep the child or relinquish him or her for adoption, and discussions have not gone on for more than 3 months.

Physical harm and emotional harm must be serious to justify a finding of good cause as defined by this regulation. A finding of good cause for emotional harm may only be based on a demonstration of an emotional impairment that substantially affects the individual's functioning. For every good cause determination that is based in whole or in part on the anticipation of emotional harm to the child, the parent or the caretaker relative, as provided for in 45 CFR 232.42, the State or local IV-A agency will consider the following:

- The present emotional state of the individual subject to emotional harm
- The emotional health history of the individual subject to emotional harm
- Intensity and probable duration of the emotional impairment
- The degree of cooperation to be required
- The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

Non-Public Assistance Cases

Non-public assistance cases are those child support enforcement cases opened to establish paternity, to seek support for children who are not AFDC recipients, or both. They are initiated in two ways: (1) applications may be filed by custodial parents requesting services; and (2) when public assistance cases are terminated, the family must be provided support enforcement services for a brief transition period.

All mandatory services of the Title IV-D agency provided to public assistance cases must be provided to non-public assistance cases. In fact, the 1984 Child Support Enforcement Amendments require States to publicize these services to ensure public awareness of their availability. Securing IV-D services for non-AFDC families often keeps these families from needing public assistance, thus reducing future welfare costs for children who can be supported adequately by their parents.

At the initial interview, non-AFDC clients should be told which services are available, fees that will be charged, what their involvement might be, and what can be expected to happen. Custodial parents or relatives may apply for assistance in locating absent parents, establishing paternity and support orders, enforcing orders, and collecting support payments. Because the monies collected on these cases are not assigned to the

State for the recovery of public assistance funds spent, agencies are required to charge a fee when services are applied for. This fee can be set at a flat dollar amount not exceeding $25 or can be determined by a payment schedule based on the applicant's income. However, the amount of this fee cannot discourage those individuals most in need of the services. Additionally, agencies may recover costs incurred in providing the requested services, if those costs exceed the application fee, by deducting the costs from the amounts collected.

Transfer Cases

Transfer cases are those opened in one agency and later transferred to another. Initiating agencies (i.e., those from which services originally are requested) sometimes must refer a case to another jurisdiction for processing or to request assistance in location, establishing paternity or support orders, enforcement, or collection. This may be necessary because the custodial relative has relocated or because the absent parent is believed to be outside the initial jurisdiction.

If a public assistance recipient moves, case information is transferred to the new area, where the local welfare agency reevaluates it to determine continued eligibility. As the AFDC case is established, the local child support enforcement office is notified and the intake process follows as described above for other public assistance cases. If a non-public assistance caretaker parent moves, the non-public assistance case also may be transferred to the new jurisdiction for processing (in some States, individuals may need to reapply for services). When cases are transferred, the original agency must forward all available information that will assist the receiving agency in processing the case.

Interstate Cases

These cases involve more than one agency because the principals in the case do not reside in the same place. The problems of establishing and enforcing support orders are compounded when the absent parent and dependent child do not live in the same area, especially if they live in different States. In the past, complications often discouraged caretaker parents from seeking assistance on interjurisdictional cases, and when assistance was sought results often were disappointing. Most caretaker parents are not financially able to incur the costs that would be involved in physically going to the other State to initiate actions. Therefore, many absent parents have successfully avoided their responsibilities simply by relocating. As the population has become more mobile, the interstate child support enforcement problem has become more acute, forcing more abandoned families onto the welfare roles.

Although interstate case processing continues to be one of the most difficult aspects of support enforcement, the past few years have shown many improvements. Because of increased cooperation among jurisdictions, improved location techniques, and strengthened legislation, these cases are comprising more of the total child support caseload. A discussion of the intake process for these cases can be found later in this chapter.

INTAKE PROCEDURES AND ISSUES

The gathering of information for a child support case file is a continuous process that begins with the referral or intake forms that open the case. The information needed to open a case includes:

- Information on the welfare or nonwelfare family

- Information on the absent parent
- An executed assignment of support rights.

Preparation of an accurate and complete case record is important to the child support enforcement process because the subsequent actions on a case rely on the information gathered by the child support worker during the intake process. A well prepared case minimizes the time it takes to initiate support payments and helps the system to operate effectively. This information is obtained from numerous sources and in various forms depending on the nature of the case. The chronological steps a caseworker will follow are:

- Screening the individual referral form to determine if the information provided by the applicant or the Title IV-A agency is accurate and complete
- Conducting the initial interview
- Obtaining all relevant legal documents and any additional required information to be incorporated in the case record
- Setting up the child support case record.

The following sections describe each of these steps of the intake process.

Screening the AFDC Referral or Application Form

The intake worker should screen the application or referral form to determine if it is accurate and complete. If it is not complete or contains incorrect information, the worker must contact the IV-A worker or the applicant for additional information. When necessary information (e.g., the Social Security number of the absent parent) is missing, the child support agency will obtain this information, if possible, during the initial interview with the individual. See Exhibits 3.1 and 3.2 for examples of intake forms.

Often a child support enforcement agency will conduct the initial interview at the same time the application is filed. However, sometimes it is necessary to schedule an appointment. Efforts to schedule an interview with the individual can be initiated after receipt of the application or the AFDC referral. Contact form letters often are used for scheduling these appointments.

Information sought during interview. The information gathered from this interview lays the foundation on which the case will be developed, and the relationship that is established during this first interview may set the tone for subsequent contacts. Therefore the intake worker must concentrate on gathering and documenting all pertinent information while attempting to establish the rapport that will contribute to a cooperative working relationship.

On referring public assistance cases to the child support enforcement program, the local AFDC agency will provide basic case data. On non-public assistance cases, this information will be obtained on an application for services. Cases should include names, addresses, birthdates, and Social Security numbers for all principals in the case. This same information should be provided about the child(ren) for whom services are being provided or for whom support is being sought. Additional information related to the collection of support includes whether or not the parents were married at the time of the

EXHIBIT 3.1

CUSTODIAL PARENT INFORMATION SHEET

I. IDENTIFYING INFORMATION

Name ______________ ______________ __________ _______ ______________
LAST FIRST MIDDLE MAIDEN ALIAS/NICKNAME

Current or Last Known Address

____________________________ __________ ______________________
NUMBER and STREET APARTMENT CITY

____________________________ __________
STATE ZIP CODE

Date of Birth _____ _______ ______ Social Security Number __________
MONTH DAY YEAR

Telephone ____ - _____ - ___________ Race ___________ Sex ___________

II. INTERVIEW QUESTIONS

A. RELATIONSHIP

1. What is your relationship with the children for whom support is being sought?
2. What is your relationship to the absent parent from whom support is being sought?

B. MARITAL STATUS

1. Are you now or have you ever been married?
2. If so, when and to whom?
3. Name any children born of this marriage.
4. What is your current marital status?
5. If divorced, when and where did you file?
6. Can you provide a copy of a divorce decree or separation agreement?
7. Are you receiving child support or alimony?
8. If so, from whom, how much, and with what frequency?

C. EMPLOYMENT

1. Are you employed?
2. If so, what is your employer's name, address, and telephone number?

D. DISABILITY

1. Do any of the children have any extraordinary physical or mental handicaps?
2. If so, describe limitations, daignoses, treatment required, etc.

EXHIBIT 3.2

ABSENT PARENT INFORMATION SHEET

I. IDENTIFYING INFORMATION

Name	____________	____________	________	______	__________
	LAST	FIRST	MIDDLE	MAIDEN	ALIAS/NICKNAME

Current or Last Known Address

____________________	______	______________
NUMBER and STREET	APARTMENT	CITY
____________________	______	
STATE	ZIP CODE	

Date of Birth ____ ____ ____ Social Security Number ________
MONTH DAY YEAR

Telephone ___ - ___ - ________ Race __________ Sex ________

II. INTERVIEW QUESTIONS

A. RELATIONSHIP

1. How is the absent parent related to the dependent child or children?______________________________

B. MARITAL STATUS

1. Is the absent parent currently married or has he/she been married previously?______________________________

2. If so, to whom?______________________________

3. When?______________________________

4. If the absent parent has been divorced or legally separated, provide dates of proceedings and identify courts through which they were handled.______________________________
____

5. Can you provide evidence of separation or divorce proceedings?
____

6. If the absent parent has been married to someone other than the custodial parent, name any children born of this marriage.
____
____

7. Name any other dependents for whom he/she is financially responsible.______________________________
____

C. LEGITIMACY

1. If the parents were not married when the children were born, has legitmacy been established?______________________________

2. If so, how and when?______________________________

3. If legitimacy has not been established, has paternity/maternity been acknowledged either verbally or in writing?

D. EMPLOYMENT

1. Give the absent parent's current or last known place of employment.

Address______________________________
Telephone______________________________
Position______________________________

2. What is his/her usual occupation?____________________

3. What is his/her monthly earned income?____________________

4. List any income other than wages, i.e., annuities, retirement benefits, etc.______________________________

E. RESOURCES

1. Describe any of the following assets held by the absent parent.

Asset	Description	Location	Approximate Value
Real estate			
Bank accounts			
Automobile			
Equipment			
Stocks, bonds, etc.			

2. Describe all potential assets such as debts owed, lawsuits pending, inheritance, etc.______________________________

3. Describe credit availability, such as likelihood of obtaining loans.______________________________

F. MILITARY HISTORY

1. Has the absent parent ever been a member of the armed forces?

2. Which branch?____

3. Discharge status______________________________________

4. Discharge status______________________________________

5. Benefits earned_______________________________________

6. Current rank or rank at time of discharge___________________

G. PHYSICAL DESCRIPTION

Height______________ Weight______________ Color of hair____

Color of eyes ________ Distinguishing characteristics____________

Can a photograph be provided?_____________________________

H. SUPPORT PAYMENTS

1. Is child support being paid?____________________________

2. Amount____

3. Frequency____

4. Regularity____

5. Voluntary or court ordered?_____________________________

6. Date last payment received_____________________________

7. To whom payments are made_____________________________

8. Method of payment_____________________________________

I. PUBLIC ASSISTANCE

1. Is the absent parent now or has he/she ever been a recipient of public assistance?___________________________________

2. Explain____

child's birth. If they were, then the case should reflect the current status of the marriage. If the parents are no longer together, any legal documents, support orders, or agreements should be provided. These will go toward establishing the client's eligibility for support, the basic criteria for which are:

- Whether the mother (or responsible parent) indeed has the children
- Whether support is entitled through a court order (often part of the divorce decree)
- Whether support is entitled through circumstances of birth, i.e., whether the children were born during the marriage or whether paternity has been established.

In cases involving children born out of wedlock, there should be careful documentation concerning the father, the current relationship between the absent parent and the child, and the amount of support currently being paid or paid in the past. Although the custodial parent may have these documents with her or him, chances are that at least some will need to be forwarded. For cases requiring action to establish paternity, the caretaker parent should be asked about the alleged father's willingness to admit paternity and to provide financial support for his child.

In many child support enforcement cases, the whereabouts of the absent parent are unknown. Until the parent has been located, the case cannot proceed toward collection. In this situation, all information that could help locate the parent must be gathered. The primary source of locate information usually is the caretaker parent; however, relatives, friends, employers, neighbors, and members of the business community can be valuable resources. The next chapter, Chapter 4: Locate, provides a more complete description of these sources.

Information provided during the interview. The primary focus of the intake process is to gather information necessary for establishing a case record and for initiating case actions. However, this also is the point at which certain information needs to be provided to the caretaker relative requesting services. Because this individual probably will be the primary contact for the case, he or she should understand what the child support enforcement effort involves.

On all cases, the client should be told about what needs to be provided or reported, how to report changes, and who the caseworker or agency contact for that case will be. By clarifying issues such as these when a case is opened, it is more likely that the case can be processed expeditiously, that the caretaker parent's cooperation will be obtained, and that time-consuming calls to determine case status can be limited.

In addition, the interviewer may want to supply information on specific aspects of the process. Many child support enforcement agencies have developed brochures that provide relevant information on child support services. By supplying the applicant with printed material, the worker can save precious interviewing time. However, the following subjects may be discussed if time permits:

- Locator services. The worker should explain that information is necessary for this process to be effective. The applicant is a prime source of location information.

- Methods for establishing support obligations. If an enforceable support order has not been established, the worker should briefly explain to the custodial parent the process for determining the amount of support and the methods by which it becomes legally enforceable.

- Monitoring and collections. The worker should explain that, once a support obligation has been established and a method of payment determined, the case is monitored closely for compliance. By law, any payments received by the custodial parent must be sent immediately to the IV-D agency. Knowingly keeping such money constitutes fraud, and the client in such circumstances risks prosecution.

- Enforcement procedures. The worker may briefly explain possible enforcement remedies--whether court related or administrative--so that the custodial parent knows the extent to which these actions may be taken and the impact they may have on the absent parent.

- Time required for payment collection and disbursement. Especially in non-AFDC cases, the worker should give custodial parents a reasonable estimate of the time required before they can expect support payments.

Confidentiality and Safeguarding of Information

The custodial parent should understand that the law prohibits any indiscreet discussion of case material. Safeguarding information is an extremely sensitive area. Citizens of this country have a right to privacy. Even though the child support enforcement agency can acquire sensitive information on individuals, it must take steps to ensure that this information is used only for the intended purpose.

The child support enforcement agency must establish criteria in accordance with State statutes that impose legal sanctions on the misuse or improper disclosure of information concerning applicants or recipients of child support services. In addition to child support-related activities, case information may be used for the following:

- Information may be released for any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any child support plan or program; prosecuting attorneys who represent the child support agency or the recipient may obtain all case information necessary for their services to be provided.

- The caseworker may relinquish information to authorities for the administration of any other Federal or federally assisted program that provides assistance or services directly to individuals on the basis of need. This includes sheriffs, police officers, or other law enforcement personnel as long as their need for the data is related to the operation and administration of such a program.

- Federal, State, and local parent locator services must be given identifying information on the absent parent so that their services may be provided.

- When the Internal Revenue Service (IRS) is consulted on a case, information may be provided in accordance with the established IRS procedures. Any other requests for information from the IRS should be referred to the program's legal advisor.

- In addition, information concerning dependent children may be made available to the acknowledged or legal father. However, limitations may be placed on certain records of adoption, court proceedings, or abuse and Federal regulations preclude the disclosure of information that would identify, by name or address, an AFDC recipient.

This listing is merely for example purposes. Whenever there is doubt about the legality or appropriateness of releasing information, the caseworker should seek the approval of the agency's legal advisor. It is common for a State, county, or office to adopt more restrictive confidentiality requirements. The intake worker should become familiar with the local laws, regulations, manuals, and policies and comply with them.

These safeguards specifically prohibit disclosure to any committee or legislative body (Federal, State, or local) of any information that identifies by name or address any applicant or recipient of support enforcement service. In general, child support enforcement workers should not discuss the particulars of any case information to which they have access; cases may be discussed when the purpose of the discussion is to obtain or enforce the child support obligation.

Documentation

Documents are an important part of initiating a child support case. They are used in determining eligibility, paternity, and ability of an absent parent to pay support and, when appropriate, in locating an absent parent. Documentation may be in the form of other public assistance or child support enforcement case records, legal documents such as divorce and separation decrees, birth certificates, employment records, income tax returns, letters, etc. Whenever possible, such documentation is obtained from available records and from the caretaker parent, but often outside sources, such as credit bureaus and the IRS, must be used. When this is necessary, the requesting workers should identify who they are, the agency they represent, what information they need, and the agency's authority for requesting this information. Many organizations, businesses, and individuals will be reluctant to reveal anything until they understand that the child support worker is legally authorized to obtain information needed to process a child support case.

Establishing a Case Record

Federal regulations require that the child support enforcement agency immediately establish a file on all cases referred for services after the AFDC referral form is received on AFDC cases and after an application for non-public assistance child support services is taken (and any required fee accepted).

The child support file (or case record) must contain all applications, correspondence, forms, etc. that are child support related. It also must include recordings that reflect all action taken on the case and the results, if any. Recorded information will include but not be limited to telephone calls, office visits, and correspondence from and to the recipient, the absent parent, and collateral agencies and individuals such as county prosecuting attorneys.

The intake worker should organize case information in an orderly and efficient manner for easy access. Documents should be grouped categorically to eliminate extensive file searching. The format for case organization is less important than having all cases within an agency organized in the same manner. Listed here are some suggested topics by which documents may be grouped.

- Legal documents. These include all copies of orders, decrees, writs, or other documents related to court or other legal enforcement.

- Absent parent information. This section includes all identifying information, documentation of resources, data to be used for locate purposes, and any other related information.

- Custodial parent information. Include here all documentation records of the custodial parent, including whether or not all information has been received.

- Dependent child information. This section would be similar to that of the custodial parent but would concern the child for whom support is being sought.

- Financial information. Payment records of ordered public assistance support payments and a payment history compose this section.

- Agency records. All forms and information relating to agency policies, such as case reviews, should be grouped together here.

Another practice that contributes to effective use of child support file information is the listing of case development. Each agency should maintain a chronological record for each case and keep it accessible. Usually several different individuals need to review or work with the average case. Each of these people must be able to determine easily all activity that has taken place. This is particularly important in cases that must be considered for enforcement.

In addition to showing a record of activity, the case record would show the accurate and unbroken line of responsibility for the case. Space should be provided for the full name of the worker who received the information or took the action, the date, the method, the location, and the individuals involved. If it becomes necessary to process a case through the courts, the worker who handled the case may be required to testify. Also, if agency actions and case activity records include the names of responsible agency personnel, the attorney's job is made easier and the probability of effective enforcement is enhanced.

Case files should be maintained and stored in a manner that ensures their security. They should be accessible and easily traceable. However, their location should not allow principals in a case the opportunity to view the contents of other cases.

CONDUCTING INTAKE ACROSS STATE LINES

Interstate child support cases present a unique challenge to the intake worker. The intake function generally is performed in the State where the children reside, and a common complaint at all levels of the Program is that interstate child support files do not include accurate or complete documentation. One explanation for this is that, because two State programs must become involved, each expects that the bulk of the data will be collected by the other State. The caseworker should not assume that some individual or agency in the State where the absent parent resides will carry out this function as a step in the interstate case processing sequence. Indeed, making this assumption decreases the quality of the information contained in interstate child support files.

A lack of clearly defined roles and responsibilities most likely causes interstate cases to be initiated without sufficient data. At present, it is not clear whether an interstate case referral constitutes an automatic request for location assistance. States routinely respond to specific requests from other States to assist in locating an absent parent, but just as routinely they return cases to the initiating State when the absent parent is difficult to find or where other supporting documentation is missing. Such cases remain the initiating jurisdiction's, and related problems are therefore "theirs." Many States do not conduct investigations on behalf of other States on their own initiative, even though a majority of the relevant information may be obtained locally. Because of the distances involved, the custodial parent in an interstate case is seldom readily accessible for follow-up contacts. For this reason, it is particularly important that the referral information obtained in the initial intake interview be accurate, complete, and well documented. Referrals should be processed as quickly as possible so that the information used to begin case actions is current and useful.

Clearly, interstate cases present a particular challenge. The succeeding chapters discuss the requirements and problems related to these cases at each processing stage.

OUTCOMES OF THE INTAKE PROCESS

Through the intake process, a caseworker will have determined the eligibility of the client to receive support, initiated the dialogue with the client, and established the case file. The success of a child support case often depends on how carefully these steps are performed.

Much of the information collected during intake will be used in locating an absent parent, often the next step of processing a case. In these cases, after eligibility is determined, the case is turned over to a locate worker (often the intake worker is also the locate worker). This second step is discussed fully in the next chapter.

CHAPTER 4

Locating Absent Parents

INTRODUCTION

Under Federal law, the Child Support Enforcement Program is charged with locating parents and alleged fathers who are not financially supporting their children. This chapter describes the locate function and explains how Federal, State, and local child support enforcement workers find absent parents.

Because of the variety of organizational and administrative structures in State programs, different approaches are used to locate absent parents. Since the lines of responsibility for location differ so greatly from program to program, this chapter treats State and local location activities as a single category. Initial State and local locate techniques are discussed first, followed by discussions of State and Federal Parent Locator Services and credit bureaus.

INITIAL LOCATE TECHNIQUES

When a child support enforcement agency receives a case, the caretaker parent is asked to provide any information that will facilitate contacting the absent parent or alleged father. With sufficient and accurate information, the child support enforcement office can contact the absent parent by telephone or letter and begin necessary actions for collecting support or establishing paternity. As much information as possible about the absent or alleged parent should be obtained on all cases. The following list includes most of the elements needed for initial locate efforts:

- Full name, nicknames, aliases
- Current or last known address
- Social Security number
- Date of birth
- Place of birth
- Mother's maiden name
- Current or previous employment
- Names and addresses of friends or relatives.

The most crucial element is, of course, the individual's name. The second most important element is the Social Security number; it forms the basis for locating absent parents through computerized sources. If the Social Security number is not known, but the place of birth and mother's maiden name are available, it is possible to secure the number.

Unfortunately, in many cases complete information is not available. In these cases, a locate worker must pursue other sources to determine the whereabouts of the individual in question. Using the information that the caretaker parent has been able to furnish, locate workers begin investigating sources that could lead to a current address or place of employment of the absent parent. The search may entail a single telephone call or an extremely complex investigation involving sophisticated computerized information systems that provide access to records kept by organizations or agencies within the particular State or extending throughout the Nation.

Several public and private local agencies and organizations maintain records on citizens which can be helpful in determining an absent parent's last known address and place of employment. By contacting the service, disconnect, or transfer division of telephone and utility companies, locate workers frequently can obtain a current address for absent parents. Neighbors, landlords, and the change of address division of the local post office also are good sources for obtaining a current address.

The last known employer can provide a great deal of information to assist in locating an absent parent even if that person no longer works there. Employment files usually contain the date and reason for the termination of employment; last home address; names of companies that have inquired for employment references which can lead to the current employer; name, number, and relationship of dependents claimed for tax purposes; name of alleged father's insurance company and the type of insurance; Social Security number; address where the last W-2 tax statement was sent; and names of friends on or off the job.

The Scott County, Minnesota IV-D collections unit has found that daily newspapers hold a wealth of detailed personal information about local residents and visitors. Absent parent information has been gathered from many local news articles, and financial information has resulted from articles about lawsuit settlements and race track and speedway winners. Newspaper pictures and captions also have yielded information. Once each week, a designated collection officer reviews local and adjoining county newspapers for information related to any of the county's absent parents. This technique works best in rural areas with small caseloads.

The New Mexico Child Support Enforcement Bureau matches its absent parent file with other New Mexico agencies to locate absent parents working for the State and to verify their income. The IV-D agency matches its absent parent master file against the State Employee payroll system and has established a payroll deduction system for State employees who owe child support payments. Using the absent parent's Social Security number or date of birth, the New Mexico Child Support Enforcement Bureau identified approximately 100 State employees who owe child support payments. Each absent parent then was contacted regarding the status of the obligation and encouraged to begin a payroll deduction. The IV-D agency anticipates collecting approximately $50,000 annually with this method. The New Mexico Bureau also is exploring the possibility of performing similar matches and establishing payroll deduction systems with city and county governments within the State.

Public and private organizations that can provide locate information include:

- Department of Motor Vehicles
- Tax Office
- Employment Security Agency

- Welfare Office
- State Bureau of Vital Statistics
- Hospital admissions records
- Chamber of Commerce
- Military records
- Licensing boards
- Directories (including telphone, businesses, correctional facilities, parole boards, mobile home parks)
- Banks, finance, and insurance companies
- Local unions
- Relatives
- Neighbors.

The sources listed above can provide the child support enforcement agency with a wide variety of data about an absent or alleged parent. Information to obtain from these agencies includes the following:

- General physical description
- Photograph
- Military history
- Educational background and schools attended
- Membership in professional or social organizations
- Hobbies
- Types of employment
- Names and whereabouts of friends
- Description of automobile or other vehicles
- Record of incarceration or arrests
- Identification of property or financial resources
- Professional, occupational, or other licenses held
- Accounts with finance or insurance companies
- Local tax, voter registration, or marriage records

- Public assistance or other agency records
- Church or baptismal records.

The amount of information required for successful location is not the same in all situations. In small towns or rural communities, just having a correct name may be sufficient to determine whether or not an individual is residing there. In larger cities and metropolitan areas, it may be necessary to have a complete name, Social Security number, and current home address or place of employment for a successful location. The Kentucky child support enforcement program has dealt with these differences by establishing information requirements that are determined by population in the vicinity where the absent parent is believed to be. For example, name, city, and State are all that is required if the city has a population of less than 1,000. If the population is more than 5,000, a complete street address, route number, or post office box is needed for both the absent parent and his employer.

As information is obtained and documented in the case record, the child support enforcement worker must begin location efforts as quickly as possible. In a mobile society such as ours, individuals move about freely and frequently. When leads are checked and contacts made expeditiously, the likelihood of successful location is increased. If the process is delayed, the absent parent may relocate, and information that could have assisted in a successful location no longer may be useful.

STATE PARENT LOCATOR SERVICE

When local sources fail to provide sufficient information, the caseworker generally turns to the State Parent Locator Service (SPLS). All State programs are required by Federal law to establish and operate an SPLS. This Statewide resource can expand the location process by interfacing with computerized records held by State agencies, military registries, and other State child support enforcement programs. For example, the SPLS in most States can conduct a Statewide check of welfare and social services files, driver's licenses, vehicle registrations, unemployment insurance payments, unemployment benefits, taxes, and police records. The SPLS not only provides assistance to child support enforcement agencies within the State, but it also acts as a clearinghouse for location requests from other States.

The SPLS in each State uses all available resources to gather information needed to pursue cases of paternity and nonsupport. These location efforts have been enhanced by the development and increased availability of automated systems and computerized data banks. Additionally, the Child Support Enforcement Program has been given the authority to access data banks of other agencies with records containing information that can assist in location efforts. As the Program has developed, these procedures have become more and more sophisticated, reducing the amount of time required for location in many cases and increasing the number of cases for which successful location is accomplished.

In most jurisdictions the locate worker will submit the form specified by the State to the SPLS to initiate the search immediately after a case is assigned. The results of the search will be returned to the locate workers as they are received by the SPLS. The locate worker should take prompt action to verify the accuracy of the information and reference it in the case file. If the SPLS is unsuccessful in locating the absent parent or alleged father after verifying the information, the search through local sources should be continued and a request for assistance should be submitted to the Federal Parent Locator Service (FPLS).

In most cases, absent parents are located in or near the jurisdiction in which a case is initiated. For this reason, many programs adopted policies that require location workers to pursue all leads and exhaust all local information resources before submitting a request for SPLS or FPLS assistance. However, the mobility of absent parents makes it important to obtain information and take appropriate action immediately. To follow up on leads as quickly as possible, many programs now contact both the SPLS and FPLS while still conducting local locate investigations. This approach reduces the lag time between terminating an unsuccessful local search and beginning a State and Federal search. This expedited approach has successfully reduced the time required for location and increased the number of successful locations.

FEDERAL PARENT LOCATOR SERVICE

The FPLS is operated by the Office of Child Support Enforcement (OCSE) in Rockville, Maryland. It was established as a provision of Public Law 93-647 to provide address information from Federal sources to State and local child support enforcement agencies. Although this service also is available to attorneys and other authorized persons working on parental kidnapping cases, this chapter deals exclusively with its role in locating absent parents and alleged fathers.

Congress authorized OCSE to provide available address information from files and records maintained by any departments, agencies, or instrumentalities of the United States or of any State. The only exceptions to this access include disclosure that would adversely affect the national security or confidentiality of the Census data. The service is available for both welfare and nonwelfare cases, with a modest fee charged for nonwelfare cases requesting only location services.

The FPLS is an automated service, using the speed, efficiency, and accuracy of complex computerized systems to respond to requests from child support enforcement agencies and workers nationwide. With more resources from which information can be obtained and procedures that expedite the processing of requests, information can be returned to requesting agencies in as little as 2 weeks. With this quick turnaround time, addresses and other location information can be used before the absent parent or alleged father relocates.

Federal agencies that provide information to the FPLS include the Internal Revenue Service (IRS), the Social Security Administration (SSA), the Selective Service System (SSS), the Department of Defense (DOD), the Veterans Administration (VA), and the National Personnel Records Center (NPRC).

By providing the absent parent's last name and Social Security number to the IRS, the FPLS can obtain home addresses shown on the most recently filed Federal income tax forms. Since the IRS maintains records on more than 100 million individuals, this is one of the most valuable resources for locating absent and alleged parents. Once a record is matched with the IRS record, the information is returned to the requesting State.

The FPLS now can obtain the absent parent's Social Security number, when not known, from the IRS. This is accomplished by providing the IRS with the Social Security number of the custodial parent and the absent parent's last name. The procedure is effective only if the couple has filed a joint return within the last 3 years and the absent parent has not filed a subsequent joint return with another spouse.

In October 1984, OCSE signed an agreement with the IRS that enhances the ability of the FPLS to obtain locate and asset information on absent parent taxpayers. This effort requires a cooperation between State IV-D agencies, OCSE, and the IRS. The new effort is referred to as "Project 1099" (after IRS form 1099, which financial institutions and government agencies use to report unearned income). Information included on this form that is of particular interest to child support enforcement locate workers includes not only the individual's address, but also the address of the institution filing the 1099 form. Therefore, it is possible to obtain a current and accurate address as well as asset information that could prove essential in enforcement and collection efforts.

Project 1099 applies in cases for which address information has been requested previously from IRS but location has not been accomplished. Security standards are extremely rigid, and the States must attest to their compliance with required efforts to safeguard information. In fact, requests and responses are submitted through OCSE to IRS on magnetic tape. Further information obtained through this source cannot be disclosed to third parties or used in litigation relating to establishing or collecting support obligations. The information is provided solely for use in locating absent parents. However, if information received through Project 1099 is verified by an independent source, the information from that source is restricted only by standard regulations.

Another primary source of location information is the SSA. Three kinds of information provided by this source include:

- Social Security numbers
- Employer addresses
- Beneficiary addresses.

As noted above, Social Security numbers are often critical in locating absent parents. Many of the locate sources depend on this number as the primary or sole identifier of individuals. Without a valid Social Security number, State child support enforcement workers often cannot obtain information available through motor vehicle records, driver's licenses, unemployment insurance, or other State files.

Employment information also is available from W-2 forms used by SSA to record annual earnings and to determine eligibility for potential benefits. Since W-2 forms are filed for most individuals employed in this country, the files are extensive. They include employer names and addresses for over 200 million individuals. In addition, SSA has address files on all recipients of Social Security benefits. SSA responds within 2 weeks to State requests for employer addresses.

The IRS and the SSA are the most comprehensive sources available to the FPLS. In more than 70 percent of location requests, an address is obtained from one or both of these agencies. In most cases, the FPLS provides both the home address from the IRS and the employer's address from SSA.

In 1984, the FPLS added a new location resource, the Selective Service System (SSS). Since the reenactment of mandatory registration for military service, all 18-year-old men have been required to provide the SSS with information that includes basic identification. Over 11 million individuals currently are registered for the draft, and their registrations provide addresses that can lead to successful location efforts. Since many absent parents and alleged fathers are in the age group that must register with SSS, these files will prove to be an excellent source for location information.

VA files include information on over 15 million veterans and dependents of veterans. These files contain valuable location information on all individuals receiving VA disability payments, retirement pensions, or educational benefits.

Additional location information is available through NPRC and DOD, two sources that record current duty stations for 5 million military and civilian Federal service employees. In fiscal year 1985, SSA began identifying Federal and military employers for cases so the FPLS could forward location requests on these cases automatically to the NPRC and DOD for duty station identification.

In FY 85, the FPLS processed over 500,000 requests for address information. OCSE is in the process of redesigning the FPLS; as part of this redesign, it developed a new form for submitting FPLS and parental kidnapping action requests; a copy is included as Exhibit 4.1.

CREDIT BUREAUS

A resource for location information that is used widely by State and local child support enforcement workers is the credit reporting service, or credit bureau. These commercial enterprises acquire comprehensive credit histories on individuals who have paid for services or merchandise on credit or who have borrowed money from lending institutions.

The child support enforcement agencies that have arranged to get information from credit reporting services have found them to be reliable sources of information, not only for locating the absent parent, but also for determining his or her resources and financial status. These records can be updated when a request for information is received, thereby indicating recent information, including:

- Full name
- Social Security number
- Current address
- Current employer
- Former address
- Former employer
- Date of last inquiry or credit request
- Name of creditors
- Record of liens, judgments, bankruptcies, divorces
- Status of credit accounts.

Most of the credit reporting agencies now have direct access to other similar agencies, giving them nationwide access to credit information. In fact, some of the larger credit bureaus can secure information from cooperating bureaus in foreign countries.

Exhibit 4.1

Form Approved OMB No. 0960-0165

REQUEST FOR FEDERAL PARENT LOCATOR SERVICES

Date: ________________

U.S. Department of Health
and Human Services
Office of Child Support Enforcement
Rockville, MD 20852

PAGE 1 of 2

A. ALL ITEMS MUST BE COMPLETED, UNLESS INDICATED OTHERWISE.

1
1

1. **State Abbreviation:** *Enter the standard 2-letter State abbreviation.* ☐☐ 2 3

2. **Station Number:** *Enter your State's Parent Locator Office number.* ☐☐ 4 5

3. **Social Security Number (SSN):** *You must enter the SSN of the absent parent when known.* ☐☐☐-☐☐-☐☐☐☐ 6 8 9 10 11 14

4. **Case Identification Number (CIN):** *Enter the State-assigned CIN. In the absence of the SSN, the CIN becomes mandatory for processing and tracking. Only use letters A-Z, numbers, and hyphens.* ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ 15 29

5. **Local Code:** *Enter your jurisdiction's 3-digit identification code.* ☐☐☐ 30 32

   User's Field: *(Optional) See the State User's Manual for further information.* ☐☐☐☐☐☐☐ 33 39

6. **Transaction Type:** ☐ 40 ◀ **Enter Applicable Code**
   - **A=Add New Request**
   - **M=Modify Existing Request**
   - **D=Delete Existing Request**

7. **Type of Case:** ☐ 41 ◀ **Enter Applicable Code:**
   - **A=AFDC/Foster Care**
   - **N=Non-AFDC (Full Service)**
   - **L=Non-AFDC (Locate Only)**
   - **P=Parental Kidnapping**

8. **Name of Absent Parent (AP):** *Use letters A-Z only. Hyphens can be used only in the last name. Do not leave spaces within a name.*

   First: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ 42 57

   Middle: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ 58 73

   2
   1

   Last: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ 2 22

   Provide last name only. If AP is a female, enter maiden name. **Alias 1:** ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ 23 43

   Provide last name only. **Alias 2:** ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ 44 64

NOTE: No address information may be provided unless a completed request form has been received (42 U.S.C. 653(d); OCSE-4 (03/86). For Parental Kidnapping: No address information may be provided unless an agreement with the Secretary is in effect (42 U.S.C. 663: 45 CFR 303.15).

OCSE 4 (3-86) Previous Versions Obsolete

9. **AP's Date of Birth:** *(Month/Day/Year)* ☐☐ / ☐☐ / ☐☐
65 66 67 68 69 70

10. **Absent Parent's Sex:** *(Fill in F or M)* ☐
71

11. **Send Request To:** *(Fill in Y or N)*
Cases With Known SSN's Are Automatically Sent To IRS.

Indicate Yes to obtain SSA benefit information ☐ **SSA Benefit Information**
72

Indicate Yes if AP is or was a Federal employee. ☐ **National Personnel Records Center**
73

Indicate Yes if AP is or was receiving veterans' benefits. ☐ **Veterans Administration**
74

Indicate Yes if AP is or was in a branch of the military. ☐ **Military Service**
75

Indicate Yes if you want IRS 1099 information (See the State User's Manual) ☐ **IRS 1099 Locate**
76

Indicate Yes to obtain employer's information. (See the State User's Manual) ☐ **Employer Information**
77

B. IF ABSENT PARENT'S SSN UNKNOWN, COMPLETE THIS SECTION

3
1

12. **AP's City of Birth:** ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
2 17

13. **AP's State or Country of Birth (if not USA):** *(See the State User's Manual for Codes)* ☐☐
18 19

14. **Name of Absent Parent's Father:**
First: ☐☐☐☐☐☐☐☐☐☐☐☐☐ ☐ M.I.
20 32 33
Last: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
34 49

15. **Maiden Name of Absent Parent's Mother:**
First: ☐☐☐☐☐☐☐☐☐☐☐☐☐ ☐ M.I.
50 62 63
Last: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
64 79

4
1

16. **Custodial Parent's SSN:** *Complete if AP and Custodial Parent have filed a joint return within the past 3 years.* ☐☐☐ ☐☐ ☐☐☐☐
2 4 5 6 7 10

17. **Custodial Parent's Last Name:** ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
11 26

Although child support enforcement programs must pay for the services provided by these agencies, the high rate of successful locations indicates that the costs incurred are easily justified. Additionally, absent parents who are located through this source are likely to be able to contribute financially to the needs of their dependent children.

PURSUING INFORMATION

In pursuing leads, the three most frequently and successfully used approaches are interviews, telephone calls, and written correspondence. Whenever possible or practical, workers try to place telephone calls to the absent parent's residence, employer, family, or friends to determine if more time-consuming and costly location efforts can be avoided. If this approach is not successful, then the location worker must consider using correspondence or interviews.

To expedite the process of sending letters of inquiry, most agencies have developed computer-generated or other form letters that can be sent to previous employers and landlords, relatives and friends, and other local organizations that might be able to assist in the location process. The Clay County, Missouri, Family Support Division sends Western Union Mail-A-Grams to absent parents who fail to respond to letters sent on the County Prosecutor's stationery. The Family Support Division leases an electronic mail transceiver from Western Union and can send the letters from the Family Support Office. This service costs approximately $170 per month and is only used when letters have proved ineffective. This process has generated a 50 percent reply rate, which is considerably higher than the response received as a result of letters.

While awaiting responses to the letters, the child support enforcement worker may need to reinterview the custodial parent for additional information. Interviews also may be conducted with other collateral contacts who have been identified by the caretaker parent or through telephone calls and letters. These interviews can be conducted face to face or by telephone. In either case, locate workers need to have excellent interviewing skills, because they often are seeking information that will be revealed only with reluctance. Friends and relatives may feel they must protect the absent parent by withholding information, and employers or other contacts may question the child support enforcement agency's legal right to the requested information. In the latter situation, the agency may have to verify its entitlement to the information before receiving a response.

CONDUCTING LOCATE ACROSS STATE LINES

In interstate locate cases, initial efforts generally are performed in the State where the children reside. As with regular locate cases, the bulk of the information is obtained by interviewing the custodial parent or referring to information that the custodial parent has provided to the State IV-D agency as part of the process of applying for AFDC benefits.

States often make referrals to the FPLS to obtain a current address for an absent parent. Since enactment of the 1984 Child Support Enforcement Amendments, States no longer are required to exhaust all local locate resources before making a request for assistance from the FPLS. This provision, along with the improvements being made in the quantity and quality of information obtainable through FPLS, should improve the ability of all States to locate support obligors who live out of the State.

However, although the FPLS can be helpful in locate efforts, one problem isolated in a recent study of interstate case processing is that States are not making full use, before initiating an interstate child support action, of the more reliable local locate resources in the State where the absent parent lives. Because of the time lost in transferring an entire case to another State, the gathered information often is current enough to place an absent parent in the correct State but no longer accurate enough to process the case without further extensive intake.[1]

Local prosecuting attorneys must employ local locate resources and State information agents of the SPLS to identify an obligor's location or property. Despite this specific allocation of responsibility, few States have established procedures to carry out locate efforts as a routing step in incoming interstate cases.

OUTCOMES OF THE LOCATE PROCESS

Locating absent parents and alleged fathers is one of the most challenging aspects of child support enforcement. In cases where paternity has not been established or an amount of support ordered, successful location must be accomplished before it is possible to proceed with the case. In other cases, paternity may have been established and a support amount ordered, but the parent becomes delinquent in complying with the obligated support payments. The absent parent may even relocate to avoid enforcement remedies, making it necessary for the entire location process to begin again before a collection can be made. Therefore this function is required whether the case then proceeds to paternity establishment, support order establishment, or enforcement--all of which are discussed in the following chapters.

FOOTNOTE

/1/ Center for Human Services, Interstate Child Support Collections Study (Washington, DC: U.S. Dept. of Health and Human Services, May 1985).

CHAPTER 5
Paternity Establishment

INTRODUCTION

In Western society, many legal implications exist for the child born out of wedlock. Although the maternal relationship is recognized legally, the paternal relationship is not unless paternity has been established. Most States have legal restrictions in which nonmarital children are denied paternal right of inheritance, use of surname, and duty to support. However, once paternity is established, fathers can be ordered to contribute to the support of their children.

Paternity establishment is very important to the Child Support Enforcement Program since approximately 60 percent of the children born out of wedlock who live and are not adopted receive welfare. This results in a high expenditure of AFDC. In addition, national demographic trends demand that child support enforcement programs place high priority on establishing paternity.

In 1960, only 5 percent of all births were out of wedlock. By 1981, the number had jumped to 19 percent.[1/] Another aspect of this problem is the ever-increasing number of out-of-wedlock births among teenagers. Between 1975 and 1979 the rate of children born to teenage mothers increased from 223 to 253 per 1,000 live births. The increase in births to unmarried women has continued virtually uninterrupted, and teenagers currently account for more than half of all nonmarital births in the United States.[2/] Furthermore, teenage mothers without high school educations are nearly twice as likely to live in households receiving AFDC as are women with high school educations.[3/]

ESTABLISHING THE PATERNITY CASE

How a paternity case is initiated depends on whether or not the mother is receiving AFDC.[4/] Although a woman who is not a recipient of AFDC is under no legal obligation to establish the paternity of her child, she can apply to the child support enforcement agency for use of its services in attempting to establish paternity. According to Federal Regulations implementing the Child Support Amendments of 1984, the IV-D agency must charge an application fee of not more than $25 for services in non-AFDC cases. This fee may be paid by the mother, the alleged father (if paternity is established), or out-of-State funds. Any application fee charged must be applied on a Statewide basis. It may be based on the applicant's income.

On the other hand, an AFDC recipient is required by law to cooperate in locating and identifying the parent of the child for whom aid is requested or establish good cause for refusing to do so. Therefore, the initiation of the AFDC paternity case begins at the IV-A agency. The IV-A agency imposes two child support-related conditions prescribed by Federal regulations: assignment of rights to support and cooperation in obtaining support. Both of these conditions are discussed in Chapter 3: Intake.

From the IV-D agency's perspective, the information needed to open a paternity case includes:

- Information on the applicant/recipient and the children

- Information on the alleged father
- A copy of the assignment of rights to support.

If the IV-A agency understands what information is required and has adhered to prompt notice regulations, the IV-D agency will receive an AFDC case record that has complete and up-to-date information. Once the IV-D agency receives the appropriate forms from the IV-A agency, a case record is established. This is generally part of the intake function.

ROLE OF THE INTAKE INTERVIEW

During the intake interview, the IV-D worker not only collects and reviews information on the mother and child(ren), but also screens the case to determine the necessity for and possibility of establishing paternity. Since paternity cases must be resolved as quickly as possible, the initial interview should be used to verify the alleged father's address, employment, and physical description. Also information should be gathered to determine if the alleged father is likely to admit his paternity voluntarily or if one or more allegations of paternity can be established. Even if voluntary admission is likely, a paternity petition is executed because a sworn statement is necessary to initiate legal proceedings should a suit be filed. After the initial interview, the worker decides what additional work must be done to resolve the paternity case. Since appropriate action differs depending on the outcome of the initial interview, separate possibilities are discussed below.

Voluntary Admission

In some cases, the mother can provide the alleged father's name and whereabouts and he will be willing to sign a voluntary agreement. A voluntary agreement of paternity is signed when the father does not wish to contest the mother's allegation and is willing, if able, to provide child support. This can occur during the initial stages of the paternity establishment process (e.g., if a mother appears with the father for her initial interview) or later if the alleged father wishes to avoid further court actions. In any event, it must be followed by a judgment and order signed by the court.

To further expedite this type of case, some States have enacted consent judgment statutes that permit the father to sign a consent. This consent is filed with the court and signed by a judge, and it often requires neither a hearing nor appearances by the parties. Technically, this is a legal document that must be approved by an attorney who represents the IV-D agency before it is filed in court. In actuality, many child support enforcement programs allow their staff to assist the alleged father in completion of the consent judgment order, especially if he appears at the initial interview with the mother, and to stamp the attorney's signature. The alleged father is told that, by signing the consent order, he is legally recognized as the father of the child, has all the legal responsibilities of a parent, and is waiving significant due process rights.

Voluntary admission allows the IV-D agency to establish paternity in the fastest and most efficient manner possible. It further provides the man who is willing to admit paternity with the opportunity to do so without having to obtain counsel, respond to complaints, or appear in court. This procedure also enables him to avoid court costs and fees for which he would be responsible if he lost the contested case.

Allegation Without Voluntary Admission

In some cases, the mother will be able to provide the alleged father's name and whereabouts but is certain that he will dispute paternity. For this type of case, the child support enforcement worker in many programs will conduct a paternity interview with the mother immediately after the initial interview. The paternity interview involves the completion of a paternity questionnaire, which requests more sensitive information that may disclose pertinent facts about the case.

Although there are limits to the appropriate examination of the mother during the paternity interview, questions concerning her personal life (e.g., sexual activity or past relationships) can be asked provided that they are limited to the period during which the child was conceived. That span of time may be as brief as the 2 or 3 weeks after last menstruation prior to conception if the mother is quite certain of dates. Generally, inquiry covers the month of the mother's last menstrual period and the month preceeding and the month after her last menses.

In all cases for which voluntary agreement from the father is unlikely, the worker questions the mother as if the case will be adjudicated. Often evidence gathered is so strong that it can be used by the worker during the subsequent interview with the father to persuade him to comply. In addition, by handling the case with the anticipation of adjudication, the worker gathers evidence that may be used by the IV-D attorney at the trial.

To resolve cases before they are adjudicated, child support enforcement workers consider the legal perspective while gathering evidence in the paternity interview and when using it in the interview with the alleged father. The following kinds of evidence are pertinent in the paternity case.

The probable period of conception. It is necessary to define the probable period of conception for two reasons. First, evidence that the mother offers regarding her sexual activity with the alleged father must have some biological relevance to the birth of the child. Second, a period of time must be established to limit the alleged father's evidence regarding the mother's sexual activity with other men.

In most States, the date of conception may be determined by the date of the child's birth. This must be documented by official records, such as a copy of the birth certificate. With this date, the worker can calculate the probable period of conception. The normal gestation period is considered 280 days, or 10 lunar months. This period measures the normal passage of time from the beginning of the mother's last menstrual period to the birth of the child. The date of conception is computed by counting backwards from the date the child was born.

Section 14 of the Uniform Parentage Act contains two limitations concerning the admissibility of evidence regarding the mother's sexual activity. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible unless offered by the mother. Evidence offered by the alleged father relating to sexual intercourse between the mother and another man during the probable period of conception is admissible only if the other man has undergone blood tests and has not been excluded as a possible father of the child.

The child's birth certificate. The worker may obtain the birth certificate to calculate the probable period of conception. If the case is adjudicated, the IV-D attorney also will need a copy of it because, as a rule, the birth certificate is entered as evidence for establishing the birth of the child and perhaps the birth weight.

The alleged father's name rarely will appear on the certificate, either because the mother was married to another man when the child was born or because the alleged father has refused to sign a voluntary paternity acknowledgment. State law often requires the name of the mother's husband to be entered on the certificate, regardless of the true biological facts, and prohibits the listing of a father for children born out of wedlock prior to the entry of a judgment of paternity or voluntary acknowledgment.

Admissions of the alleged father. This is clearly one of the most powerful forms of evidence. Any acknowledgment by the alleged father of even the possibility of his paternity severely damages any of his possible defenses.

Evidence regarding sexual intercourse between the mother and alleged father. Evidence of sexual intercourse between the parties during the probable period of conception is crucial to the mother's case. The mother generally will give the evidence during the paternity interview. Circumstantial evidence is often available from friends and roommates who were aware that the two parties were sleeping together in the same room or who witnessed the parties together in equivocal circumstances to conclude that sexual intercourse had occurred.

Multiple Allegation

A problem in some paternity cases is that the mother cannot identify with certainty which of two or more men fathered her child. Before the advent of blood testing in this country, these cases generally were considered impossible to resolve. Now they are handled routinely in many areas.

Occasionally, the mother simply needs assistance in determining the time period during which the child was conceived. Before the paternity interview, the mother may never have attempted to determine when she became pregnant. Some mothers may not know that the average period of gestation is 280 days; they may simply need a calendar to count back from the date of birth to estimate the date of conception.

In addition, the mother is asked when her pregnancy was confirmed and what date she was advised to expect delivery. This information can be obtained from the doctor who provided prenatal care. The baby's length and weight at birth and the presence of hair, eyebrows, fingernails, and toenails may indicate whether the pregnancy was full-term. Perhaps the mother kept a diary or journal that may help her recall with whom she was having sexual relations when she became pregnant. She may be able to recall the time better if she can relate it to some other event--a birthday, a wedding, an automobile accident--for which she can establish the precise date of occurrence. Such details can be extremely important if the mother ever is called to testify at trial.

Even if the date of conception can be determined within a few days, it may still be impossible to determine which of the two or more men is the father. In these cases, blood tests are extremely helpful. If at least one of the men is willing to submit to blood testing, it may be possible to proceed without filing a legal action. An exclusion or a very high indication of parentage may provide the basis for the accusation of paternity against only one man.

Of course, a paternity case in which the alleged father(s) cannot be located is difficult to resolve. However, by conducting the interview and assessing the mother's credibility, the child support enforcement worker usually can determine if the mother cannot truly identify the alleged father or if she has named more than one man to create obstacles to paternity establishment.

No Allegation

In some cases, there may be little information. The mother may be unable to provide any possible names for the father of her child(ren) or, if she can name him, can provide no evidence supporting her claim or information about his whereabouts.

No allegation of paternity may reflect the mother's unwillingness or inability to identify the father. If the mother is unwilling, the child support enforcement worker reminds the mother that she may jeopardize her AFDC grant if she does not have good cause for refusing to cooperate with the IV-D agency in identifying the alleged father. In this type of case, the worker explains to the mother what are considered good cause circumstances. (Good cause is discussed in Chapter 3: Intake.)

After explaining good cause circumstances, the worker elicits from the mother any information she may have that warrants good cause for lack of cooperation. This is documented carefully since the worker is required to forward this information to the IV-A agency. As mentioned earlier, the IV-A agency determines whether a good cause for lack of cooperation exists.

Until the IV-A agency makes a final determination, no other work is completed on the paternity case. If the IV-A agency determines that "good cause" does exist, the case is closed immediately. If "good cause" does not exist, the paternity worker must reinterview the mother, tell her that work will continue on the case, and caution her that lack of cooperation may jeopardize her assistance payment.

The IV-A and IV-D agencies must work closely together in this type of case. Although the IV-A agency makes the final determination concerning good cause, the decision depends heavily on the information that the child enforcement worker has received from the mother. As mentioned earlier, in a non-AFDC paternity case, the mother is not legally obliged to establish paternity. If she fails to cooperate, the case should be closed immediately.

Finally, a mother may not identify the father because she is unable to. This possibility may pose the greatest problems. If the father is unknown, that fact can be noted; however, the action cannot be filed. If the case is simply weak and the possibility of success at trial is very small, the decision not to proceed is left to the IV-D attorney.

In any case where litigation is deferred, the mother must be told why her child's paternity action cannot be pursued at the present time, and she must be encouraged to notify the IV-D office of new developments that might make it possible to reevaluate her case. For example, if an accused father whose whereabouts are unknown later appears, the mother should contact the IV-D agency.

The most difficult decision a worker may be required to make is that the case is impossible to pursue. The decision can be reversed if conditions change or new facts are discovered, but for many children it may mean no legal relationship with their fathers. Nevertheless, some cases cannot be litigated and must be closed.

The following are possible reasons for concluding that paternity cannot be established:

- Insufficient information exists to litigate the case
- Alleged father cannot be located or cannot be served
- Alleged father is deceased and did not acknowledge child during his lifetime.

LOCATING THE ALLEGED FATHER

If the decision is made to proceed with a case and the alleged father has not come with the mother to the IV-D agency, the location process is initiated. The alleged father should be located as soon as possible so that he may be confronted with the allegation of paternity, and served, if a paternity petition is filed. (A paternity petition is a formal written document to the court, requesting that a child's paternity be established; it is discussed in detail later in this chapter.)

The mother is a valuable resource for location. She can facilitate location greatly if she can provide the worker with the alleged father's address or Social Security number. When the mother cannot supply this information or when the alleged father is not living at the address she provides, all feasible efforts are made to ascertain his whereabouts and contact him.

Based on the information obtained during the initial and paternity interviews, the worker determines if there is an allegation against one man and if it appears that a voluntary agreement of paternity may be obtained. Although it is not a condition of AFDC eligibility, the child's mother may be willing to contact the alleged father to obtain a written admission of paternity. Otherwise the IV-D agency can contact him with the notice to appear, requesting that he appear at the child support enforcement office to discuss the mother's allegation of paternity. This notice is sent after the mother's allegation of paternity is recorded and before the filing of an actual petition.

If the alleged father complies with the notice to appear and is willing to admit he is the father, paternity can be adjudicated easily and rapidly. If the man denies paternity, the worker can assess the case before filing the paternity petition--i.e., if the man who contests paternity presents convincing evidence that indicates that he is not the father, then the worker refrains from filing an unnecessary and costly paternity petition against this particular man.

INTERVIEWING THE ALLEGED FATHER

The interview with the alleged father occurs when he responds to the notice to appear. The purposes of this interview are to make the allegation, discuss legal ramifications, allow the alleged father to respond to the allegation, and assess the case. At this time, the man is confronted with the allegation, asked to verify information on the paternity questionnaire regarding his identification and his relationship with the mother of the child in question, and given the opportunity to confess or deny paternity. He also is informed of the rights and responsibilities entailed in such an allegation.

Four different outcomes can occur as a result of the notice to appear. Descriptions of each and the appropriate actions follow:

- The alleged father admits paternity. The child support enforcement worker has a paternity agreement order ready for his signature so it may be completed and processed for adjudication immediately. The alleged father is told what his legal rights and commitments are as a result of the paternity establishment.

- The alleged father denies paternity. The child support enforcement worker obtains as much information as possible. If possible, the alleged father signs the questionnaire, under oath, with penalty of perjury, before a notary. In addition, if the alleged father denies paternity without adequate support of denial, a paternity petition may be filed along with a request for a court date. (The paternity petition is discussed below.) As a result of this interview, the case may need to be closed if father presents verified proof of nonaccess or if the IV-D attorney determines that there is insufficient case evidence to establish paternity.

- The alleged father is unsure of paternity. The child support enforcement worker should proceed with the questionnaire and encourage a blood test. The worker should explain that, if he is not the father, the blood test has an extremely high exclusionary probability rate. Blood testing procedures are discussed in more detail later in this chapter.

- The alleged father fails to appear. The child support enforcement worker refers the case to the IV-D attorney so a paternity petition can be filed.

Usually, both the child support enforcement worker and the IV-D attorney are involved in deciding whether a paternity case should be pursued when the alleged father denies allegations. Since the worker has talked to both parties involved in the case, he or she can provide information not reflected in the questionnaires but valuable in assessing the strength of the case. For example, the worker's opinion about the attitude of either party is useful to the attorney.

If the attorney is still undecided, he or she may want to interview the mother personally; other attorneys systematically interview the mother before deciding whether to adjudicate a paternity case. This interview often is referred to as a pretrial interview, but it is actually no different from the paternity interview.

PATERNITY TESTING

Probably the best information to use in determining whether to pursue a paternity case are the results of a blood test. Tests used to establish or disprove relationships have become increasingly sophisticated over the years.

It is fortunate for both children and fathers that advances in the science of genetic identification have been made. Today evidence from these tests is used widely throughout the Child Support Enforcement Program and minimizes the guesswork involved in determining the parentage of a child. If a man is falsely accused of fathering a child, genetic testing can prove his innocence 99 percent of the time, depending on the content of testing. Moreover, this conclusive and readily available evidence is inexpensive, especially when the cost of blood tests (usually no more than $400 for a full battery of tests--which is not always necessary) is balanced against the cost of supporting a child for as long as 18 years.

In addition, tests indicating that a man may have fathered a particular child may be interpreted further to determine the likelihood that he did father the child in question.

While statistical estimates of plausibility, or "inclusionary" evidence, are not accepted as widely throughout the court system as determinations of exclusion are, these estimates are extremely reliable. In particular, when considered with other evidence of relationship, genetic evidence of this kind can turn an essentially subjective determination into a far more objective and verifiable proceeding.

The Genetic Basis of Paternity Testing

All human traits are determined by genes inherited from both parents, including both red and white cell blood types. At conception, the mother's egg, which contains 23 chromosomes, combines with the 23 chromosomes in the father's sperm. As a result, the child inherits 46 chromosomes, which are paired in 23 sets. Within each set, one chromosome is inherited from the mother and one from the father. These chromosomes contain the genetic markers that determine all inherited characteristics. Because children inherit half of their genetic markers from their mother and half from their father, which genetic markers are paternal can be determined when the mother's and the child's genetic markers are known. Because the components of human blood contain many of these inherited and identifiable genetic markers, blood tests are helpful in these determinations.

Of course, a man who is not the biological father of a particular child may possess genetic markers that appear in the child. However, it is extremely unlikely that he will possess by sheer chance a large number of the same ones. For this reason, paternity blood tests examine independent groups (or "systems") of genetic markers in the blood of the child, the mother, and the alleged father.

Knowing the variations in any one marker in the blood of the mother and the child, one can specify the range of variations that may appear in the blood of the biological father. If the variations observed in the blood of the alleged father do not fall within this range, he may be excluded from paternity.

When the blood of the alleged father contains the genetic markers that must be in the blood of the biological father, he cannot be excluded from paternity. Moreover, because gene frequencies have been determined for diverse populations, specialists can predict with great accuracy the likelihood that a given man actually is the biological father of a child.

Other factors that make the identification of genetic markers effective in paternity determination are as follows:

- They are expressed at birth or shortly thereafter.
- They remain stable through life and are unaffected by extrinsic factors such as age, illness, diet, etc.
- They can be identified easily through scientific tests that allow accurate and reproducible results.[4]

Because scientific techniques provide statistically reliable data necessary to establish a child's parentage, the paternity establishment process has been transformed from a credibilty contest to a conclusive, fact-oriented proceeding.[5]

Red Blood Cell Antigen Test

At the beginning of this century, Dr. Karl Landsteiner's discovery of the ABO blood group system served as a catalyst for paternity testing as we know it today. As additional blood group systems (e.g., MNSs, Rh, Kell, Duffy, and Kidd) were discovered, the potential use of blood groups in paternity establishment increased. The term "blood group" actually refers to antigens on the red cell membrane to which the body reacts by producing antibodies.

In testing blood group systems, red blood cells are exposed to a specific antibody under controlled conditions, and the cells then are examined for a reaction of the antigen to the known antibody. The absence or presence of the antigen is determined according to the absence (negative reaction) or the presence (positive reaction) of agglutination (clumping). A laboratory technician can determine whether a reaction has occurred by examining the antigen-antibody mixture in the test tube over a magnifying mirror.[6]

For example, when testing the ABO system, a reagent containing the known antibodies that react to A, B, AB, and O red blood cells are introduced to the antigen on the red blood cell. Group A red blood cells react only to anti-A antibodies; group B red blood cells react only to anti-B antibodies; group AB red blood cells react to both anti-A and anti-B antibodies; and group O red blood cells react to neither. Similar test procedures are used with the other blood group systems. By observing these reactions, a laboratory technician can determine the typing of the antigens.

Unfortunately, red blood cell antigens are not distributed in the population with sufficient variation to allow medical experts to conclude the probability of an individual's paternity. Consequently, if the red blood cell antigen test does not provide exclusionary evidence (data that determines that the man is not the father of the child), the statistical probability of inclusion of parentage (likelihood that the man is the father of the child) is not admissible as evidence.

Although the red blood cell antigen test is not self-standing inclusionary evidence, both the medical and legal communities recommend that the test be performed first when testing for paternity determination. If a man can be excluded in this way, no further tests are required. The red blood cell antigen test is simple to perform and inexpensive compared to other testing procedures. Moreover, if exclusion cannot be established at this first stage, the test results can be used with those of additional tests to obtain inclusionary evidence.

Red Cell Enzyme and Serum Protein Test

A test that is gaining increasing respect as a reliable scientific measure for parentage determination is the red cell enzyme and serum protein test. Serum is a complex solution containing a number of proteins; these proteins are composed of amino acids, each of which has a slight electrical charge. As with blood cell structures, the information for the production of these proteins is determined genetically.

Placed in an electric field, proteins will migrate at a rate proportional to their electrical charge and size. The rate of migration can be controlled by varying the medium--the denser the medium the slower the migration of large proteins. By selecting the appropriate current and medium, a wide range of proteins can be separated. Electrophoresis is the procedure used to separate protein molecules based on their size and electrical charge. In practice a small amount of sample is placed on an electrophoresis plate along with known standards, and a current is applied for a prescribed length of time. The plate is then stained to reveal the location of the various proteins, and the migratory distance of the unknown is compared to the standard to identify the genetic type.[7]

The reasons for interest in this testing are many. The migration patterns, which are measured and compared to known standards, are easy to read. In addition, the slides can be dried, which allows a permanent record and physical evidence that can be presented in court by an expert witness. An additional advantage to using this type of testing is that rare variants can be identified through their migration rate, so there is no extra labor involved in locating them.

New protein systems with fairly evenly distributed gene frequencies are being discovered. Some of the more common systems in use now are phosphoglucomutase (PGM), adenosine deaminase (ADA), esterase D (EsD), 6-phosphogluconate dehydrogenase (6-PGD) and group-specific component (Gc). As new systems are being added, the red cell enzyme and serum protein test is becoming a more powerful probability indicator for both exclusion and inclusion.

Blood testing laboratories are finding that if a man is not the father of a child, the chance of him being excluded on the basis of this test runs anywhere from 80 to 85 percent. However, if the testing results are combined with those of the red blood cell antigen test, the exclusionary rate is between 89 and 96 percent. Because the cost of performing red cell enzyme and serum protein testing can be half that of human leukocyte antigen (HLA) testing and the test results are becoming more accurate as new systems are discovered, red cell enzyme and serum protein testing is becoming popular with the medical and legal communities.

Because the procedure for this testing is quite different than that for the red blood cell antigen test and the HLA test, which is discussed below, technicians require specialized training to perform this test and laboratories must have specific equipment. Consequently, many laboratories in this country still cannot perform electrophoretic testing. However, more laboratories have or are obtaining the technical expertise needed to include it as part of their battery of tests.

Human Leukocyte Antigen Test

In principle, HLA testing is similar to red blood cell antigen identification in that it involves a reaction of all surface antigens to a specific antibody. However, the antigens tested are those found in the white blood cells (leukocytes) and nucleated cells. HLA structures are used primarily in matching donors to recipients for organ transplantation. For this reason, they also are known as tissue antigens, transplantation antigens, or histocompatibility antigens. Like an individual's red blood cell antigen types, the white blood cell antigen types are genetically controlled.

Four subclasses of antigens are used to define an individual's tissue type. The gene codes for white blood cell antigens used in HLA testing are found at three closely linked locations (or loci) on the sixth pair of chromosomes. They are termed HLA-A, HLA-B, and HLA-C. At conception, an individual inherits one complete set of genes (A, B, C), known as a haplotype, from each parent. By testing the white blood cells for the presence of antigen markers determined by gene codes at the three loci, the phenotype of the individual can be determined. From the phenotype, the genotype (the haplotype derived from the individual parents) can be inferred.[8]

In HLA testing, the white blood cells are exposed to known antibodies. Reactions of the antigen-antibody mixture reveal the identity of the antigens. While agglutination is the reaction observed in red blood cell antigen test, cytotoxicity, or cell death, is the reaction observed in the HLA test. More specifically, the white cells are separated from whole blood to determine the ability of a specific antibody to kill the white cell. White cells are mixed with known antibodies and complement (which is important for the reaction). After incubation, reactions are detected microscopically, using a dye as an indicator. If there is dye inside the white cells, they have been killed since cell walls become permeable when they die and foreign substances (such as dye) can enter the cell. If the cells remain alive, they are intact and the dye cannot penetrate the cell. Approximately 180 antibodies exist, including at least two antibodies for each antigen tested. Therefore, 180 separate tests per person must be completed to determine the actual tissue type of an individual.

There are several drawbacks to HLA testing. As mentioned earlier, for complete typing for HLA, serological and genetic analyses of the antigens requires at least 180 antibodies, which makes the procedure labor intensive. In addition, the reagents necessary for the test are rare, so the entire process is quite expensive. Furthermore, the blood must be analyzed within 24 to 72 hours after it is drawn because the cells will die if they are not separated rapidly from the blood. Consequently, most HLA typing is confined to a few large facilities.

The major advantage of HLA testing is that it is very polymorphic (i.e., genetically rich). The number of markers in each of the three gene groups (A, B, and C) is so great that many variations occur in the population. Moreover, any one variation has a very low frequency of occurrence. Consequently, HLA is a valuable test for inclusionary as well as exclusionary purposes. "If the red blood cell antigen tests fail to exclude the alleged father and if his leukocyte variations match those of the child, it can be shown that he is a member of a class of, say 2 percent of the population that could have fathered the child--or stated another way, that there is a 98 percent chance that he fathered the child. If other factors, such as access to the mother, are taken into account, the question of paternity can be resolved under law."[9] With the HLA test alone, over 90 percent of falsely accused men can be excluded and those men who are highly likely to be the biological father can be identified. Combined with the red blood cell antigen test results, the percentage can be as high as 99 percent.

Interpretation of Paternity Test Results

As recommended by the American Medical Association and the American Bar Association, laboratories should be able to exclude at least 90 percent of falsely accused men based on test results. In general, laboratories that specialize in paternity testing advertise the strength of their tests according to Probability of Exclusion (P.E.)--that is, the probability that a given test or combination of tests will exonerate a falsely accused man. The Probability of Exclusion should not be confused with Probability of Paternity, which is a statement expressing the likelihood of paternity in a particular case. They are independent concepts and are mathematically unrelated.

Every genetic system has an associated P.E. For the ABO system the P.E. is roughly .17, for MNs it is .32, etc. For HLA, it ranges from .88 to .92, depending on the number of different test antibodies used. The HLA test is the best single system in terms of having the largest P.E., but is not the best test. The best test would be one which would give a total P.E. of better than 99 percent. In fact, any combination of systems which can give a total P.E. of .88 to .92 would equal the HLA test in the ability to detect falsely accused men.[10] Thus, two separate laboratories may use the same techniques in testing but have different P.E.s depending on the level of testing. Consequently, when selecting laboratories and methods of testing, child support enforcement workers should base their selection on the P.E. that the laboratory offers, rather than the method of testing implemented.

THE PATERNITY PETITION

If it is determined that a paternity case should be adjudicated based on the assessment of the paternity interview with the mother or an interview with the alleged father, the child support enforcement worker files a paternity petition to initiate paternity proceedings.

The paternity petition names a specific man as the defendant in a paternity case and initiates civil proceedings to establish paternity. Upon service of the summons, the man is required to respond in court to the allegation made against him within a specified time. Failure to respond may result in the entry of a default judgment.

Depending on statutory and case law and jurisdictional policy, the political entity (county or State), as well as the mother or child, may be named as plaintiff. This may be desirable if the prayer (formal request) includes payment or repayment of funds expended for the child. In some jurisdictions, a guardian ad litem may be appointed for the child who acts as plaintiff. If the guardian is a member of the IV-D staff, it will simplify signing of legal papers and be convenient for the mother or caretaker. However, in other jurisdictions, the role of guardian ad litem is more significant in that he or she acts as the legal representative in behalf of the child.

There are three general types of paternity petitions:

- Petition by (unborn) child and political subdivision. This type of petition provides for an action to establish paternity and welfare funds in a jurisdiction that gives a specific statutory basis for such action. A guardian ad litem is appointed for the child. The petition gives the essential facts regarding paternity, need, and prayer for relief by both the child and the political entity supporting the child. It directs that payments be made through the IV-D agency.

- Criminal paternity petitions. The use of civil process instead of criminal action to establish paternity is recommended because civil courts are familiar with family support matters and are more effective in enforcing child support orders. In addition they allow the alleged father to litigate paternity in a civil as opposed to a criminal setting. However, some jurisdictions provide only for a criminal remedy to establish paternity, and in other jurisdictions the prosecutor is the only attorney available to handle paternity cases.

- Petition by mother. This type of petition provides for a civil action under a general paternity statute by the mother to establish paternity. It makes a general prayer for appropriate relief. Although it is brief, it alleges all necessary elements of paternity. It is sworn to by the mother.

DEFAULT JUDGMENT

If, after a paternity petition has been filed, a summons has been served, and the alleged father has failed to appear or answer the paternity petition, the plaintiff(s) may file a default judgment. A typical judgment of paternity on default and order of support follows. Various jurisdictions may require some additional showing by the plaintiff, such as a declaration under penalty of perjury by the mother or a declaration by the IV-D attorney that proper legal procedures were followed.

PREPARING THE CASE FOR ADJUDICATION

If the alleged father persists with a denial of paternity after a petition has been filed, it is often necessary to conduct further investigation. The worker assists the IV-D attorney by verifying factual details that lend believability and support to the mother's story. Such investigation eventually could convince a judge or jury that the mother is telling the truth.

In addition to pretrial investigation by the child support enforcement worker, various legal fact-finding techniques may be used by the IV-D attorney prior to the trial. These legal procedures, called discovery techniques, enable one side to obtain information from the other between filing the case and going to trial. Although these procedures are not essential to a successful verdict, in some cases they will provide the necessary information to make a pretrial settlement or case closure decision. The techniques most often used in a paternity case include interrogatories, depositions, body fluid examinations (blood testing), and request for admissions.

Pretrial Hearing

The purpose of the pretrial hearing is to inform the alleged father of the nature and effect of the paternity proceeding and his due-process rights, encourage negotiation and settlement, and provide some structure to the discovery process. The public is barred from the pretrial hearing. This minimizes inconvenience and embarrassment to the parties in the vast majority of cases that can be resolved by consent as a result of blood test evidence.

At the pretrial hearing, the parties may present and cross-examine witnesses, make motions for blood tests, and present other evidence relevant to the paternity issue. On the basis of the information that comes out at the hearing, the judge or referee is directed to determine whether a judicial determination is in the best interests of the child and to make a recommendation to the parties regarding settlement of the case.

Adjudication of the Disputed Paternity Case

Although most paternity cases are resolved without a trial, some cases necessitate a full trial proceeding before paternity or nonpaternity can be determined. For the adjudicated cases, several issues must be considered, including jury selection, expert testimony to explain the blood test results, how the evidence will be presented, and anticipation of what defense the alleged father will use to plead his case.

PROCESSING PATERNITY CASES ACROSS STATE LINES

A discussion on paternity case processing is not complete without considering interstate paternity cases. While these cases are considered more difficult, Federal regulation 45 CFR 303.7 requires that paternity matters be pursued even if the alleged father is out of the State and that a IV-D agency in one State must establish paternity or assist a IV-D agency in another State in the establishment of paternity.

Long Arm Statutes

A State can establish paternity when the mother and alleged father live in different States with a long arm statute. A long arm statute is a legal vehicle by which the court of one State asserts its powers of adjudication over a person who resides in another State. This means that the State IV-D agency may file the action to establish paternity in the State where the mother and child reside and have the alleged father served with a copy of the petition and a summons to appear in that court, even though the petition is served in another State.

To avoid violating the alleged father's constitutional right to due process in requiring him to defend the paternity action in a State where he does not reside, the petitioner must show that the alleged father had "minimum contacts" within the State, such that "traditional notions of fair play and substantial justice" are not offended by allowing the suit to be maintained in that court.[11] For paternity cases, many State legislatures have defined "minimum contacts" to include having had sexual intercourse within the State that may have resulted in conception of the child. There also must be a State statute or court rule that authorizes courts within the State to obtain service of process on an alleged father who is out of the State.

Consequently, when a IV-D attorney wishes to bring a paternity suit against an alleged father who is out of the State, he or she first should consult State statutes to determine the availability of long arm statutes for paternity determination. Moreover, the paternity case should be reviewed to determine if facts indicate that the case meets the standards of "minimum contact."

An example of a long arm statutory provision is included in Section 8 of the Uniform Parentage Act, as proposed by the National Conference of Commissioners on Uniform State Laws. The approach allows jurisdiction to be established over the absent alleged father by the State in which the mother and child reside, provided that the actual act of sexual intercourse occurred within that State. The pertinent part of the Uniform Parentage Act is cited here because several States have adopted either its language or language that is very similar:

> Section 8 [Jurisdiction; Venue.]
>
> (b) A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this Act with respect to a child who may have been conceived by the act of intercourse.

The Uniform Reciprocal Enforcement of Support Act

Perhaps the most common legal mechanism used to establish paternity across State lines is the procedure provided for in the Uniform Reciprocal Enforcement of Support Act (URESA). The act was drafted in 1950, amended in 1952, significantly amended in 1958, and most recently revised in 1968. The 1968 version was such a substantial change that the National Conference of Commissioners on Uniform Laws renamed it the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). Section 27 of the RURESA extends jurisdiction to the State in which the alleged father resides for the establishment of paternity and enforcement of a support order. It authorizes determination of paternity against an absent parent living in another State when the obligor refuses to pay support on the grounds that he is not the father of the child. Section 27 reads as follows:

> If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

The following States have enacted the "paternity" provision of RURESA:

Arizona
Arkansas
California
Colorado
Idaho
Illinois
Kansas
Louisianna
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma
Pennsylvania
Vermont
Virginia
West Virginia
Wisconsin
Wyoming

The States of Maine and Kentucky refer to the establishment of paternity in their versions of RURESA, but Section 27 was not adopted.

A URESA action in which paternity is an issue may or may not be handled by a responding jurisdiction, even where the paternity provision has been enacted. Some jurisdictions proceed as in any other case, setting the matter for hearing and subsequently for trial if paternity is denied. Many courts, however, will set a paternity URESA for hearing and, if the father denies paternity, will remove the matter from the court calendar and take no further action.

Most States that have not enacted the 1968 amendments may still entertain a URESA paternity action on the theory that, to determine the extent of the alleged parent's "duty" to provide support under the laws of that State, the court first must resolve the paternity issue. In any event, it is advisable to initiate a URESA action even if there is a perceived probability that the responding jurisdiction will not vigorously prosecute a contested paternity URESA action. The possibility that paternity may be adjudicated either through voluntary admission or trial, with a subsequent order for support, is sufficient reason to file an initiating URESA in all cases in which the mother makes a firm allegation of paternity.

Blood Testing in Interstate Cases

As more States acquire provisions for admissibility of blood testing evidence in interstate paternity cases, laboratories (generally the larger ones) have designed mechanisms to make the process easier by providing the following:

- The identification of blood drawing centers throughout the county that are available and equipped to send blood back to the laboratory while still maintaining strict chain of custody procedures

- The provision of telephone "hot lines" that can be used to inquire which blood drawing center is the nearest and most convenient for a specific jurisdiction
- The provision of a carrier service to pick up blood drawn in remote areas
- The availability of expert witnesses who are familiar with various State child support programs if "live" testimony is necessary
- Comprehensive chain of custody procedures so there are no questions of identity in interstate cases. (This is an important feature since in most interestate paternity cases, blood of all parties is not drawn at the same location.)

If a child support enforcement program has many interstate paternity cases and the blood testing laboratory it uses is not equipped to deal with blood drawing from two jurisdictions, the program should explore the possibility of using a laboratory that has the expertise and experience in handling paternity cases involving two jurisdictions. However, before a final selection of such a laboratory is made, State statutes should be checked. Several States have statutes that require that the laboratory used be within their State.

THE BENEFITS OF ESTABLISHING PATERNITY

As mentioned earlier in this chapter, the need to reduce AFDC costs associated with the increase of nonmarital births has caused the Child Support Enforcement Program to place high priority on paternity cases. However, there are many additional benefits that result from paternity establishment.

The benefits that children acquire through paternity establishment are numerous and varied. For example, many financial benefits may accrue to children who can verify a paternal relationship. Children gain access to such "social entitlements" as Social Security benefits, pension benefits, veteran's benefits, etc., only when the link between themselves and their parents is established. More immediately, children can receive the benefits of child support payments from their absent parent only if the identity of the parent (usually but not always the father) has been established to the satisfaction of the public.

It also may be in children's best medical interest to know who their parents are. A significant number of diseases, illnesses, birth defects, and other abnormalities are passed to children by their parents. If parents do not learn of these conditions until after they have lost track of their children or if they do not know that they have parented children in the first place, they cannot warn their children that they may be susceptible to some medical disorder. This knowledge also reduces the risk of accidental inbreeding, which can be appreciable in small communities or in cases where artificial insemination by a donor impregnates the mother.

In addition to financial and medical benefits, children derive a good deal of psychological satisfaction from knowing who their parents are. Currently, there is a great deal of pressure on adoption agencies throughout the country to reveal the names of natural parents and to keep track of this information after individual children have been adopted. This psychological need stems in part from the legal and social discrimation that American society has placed on the child born out of wedlock.

THE RIGHTS OF PARENTS AND CHILDREN

Besides the benefits derived from paternity establishment, it is the right of both the child *and* his or her father to have the parental relationship established. Both parent and child deserve an opportunity to enjoy the parent-child relationship. When a parent does not live with the child, he or she is less likely to enjoy this relationship than the parent who does live with the child. In fact, the custodial parent sometimes discourages the development of a relationship between the child and his or her absent parent; the custodial parent in these cases may feel that the absent parent has forfeited his or her right to this relationship.

This is not the case. Especially when the absent parent contributes to the support of a child, he or she has the right to spend time with that child. Moreover, the child always has the right to enjoy the company of both parents. If both parents are contributing to the child's support, it is more likely that the child will be able to exercise this right.

From the Father's Perspective

The two major issues raised by the alleged father in his resistance to paternity establishment are: (1) uncertainty that he is the father of the child and (2) in the event that paternity is established, a fear of being unable to pay support, which could result in incarceration. There are legal mechanisms that protect an alleged father's rights and legal measures to prevent false paternity establishment and inequitable child support amounts.

It is often forgotten that blood tests protect the man who is *not* the father of the child. An alleged father who seriously doubts that he is the father of a child involved in a paternity case should be informed that scientific testing techniques can exclude a man from parentage or give a likelihood value that he is not the father of the child. Consequently, blood tests should be viewed as mechanisms that protect the rights of a falsely accused man.

The alleged father who resists paternity establishment due to economic considerations must be informed that courts not only consider the child's needs but also the father's ability to earn. The Uniform Parentage Act explains how the majority of courts establish a monetary child support amount:

> In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including (1) the needs of the child; (2) the standard of living and circumstances of the parents; (3) the relative financial means of the parents; (4) the earning ability of the parents; (5) the need and capacity of the child for education, including higher education; (6) the age of the child; (7) the financial resources and the earning ability of the child; (8) the responsibility of the parents for the support of others; and (9) the value of services contributed by the custodial parent.[12]

The Child Support Enforcement Amendments of 1984 require the States to formulate standardized guidelines for use in all cases where the amount of child support must be decided. These guidelines are discussed in detail in Chapter 6 of this *Handbook*.

An alleged father who is truly unable to pay support should understand that he may have "social entitlements," such as veteran's benefits, health insurance plans, workmen's compensation, and other benefits under the Social Security Act that can serve as sources of economic relief for the child provided that paternity is established.

From the Mother's Perspective

Two major issues raised by the mother in her resistance to paternity establishment are (1) public disclosure of sensitive and personal information regarding sexual activity and (2) fear of the alleged father should she identify him and file for paternity establishment action.

Mothers' rights that stem from these issues are protected by both legal and procedural requirements for processing paternity cases. While these requirements vary from State to State, OCSE has set minimum standards by which local child support enforcement programs must abide when establishing paternity.

At all stages in the paternity proceedings, any potentially sensitive or personal information obtained from either the mother or the alleged father must be treated as strictly confidential. The confidentiality of information obtained during interviews must meet the specific requirement of 45 CFR 303.21, regulations regarding the safeguarding of information. No woman seeking paternity establishment for her child(ren) may be questioned about present sexual activity, past sexual activity unrelated to the pregnancy or pregnancies in question, abortions, adoptions, or family history.

One of the conditions of eligibility for public assistance in the form of AFDC payments is the willingness to establish paternity of a child born out of wedlock for whom aid is claimed. In some instances, mothers have "good cause" for not cooperating with the child support enforcement agency in identifying the alleged fathers. As mentioned earlier, legal and procedural standards have been set to protect a woman in this situation.

From the Child's Perspective

The benefits--medical, social, psychological, and financial--that a child can derive from paternity establishment are, indeed, rights to which that child is entitled. The Child Support Enforcement Amendments of 1984, which require States to allow paternity establishment until a child's 18th birthday, were designed with the rights of the child in mind.

For example, it has been argued that a State with a statute of limitations for paternity establishment of 5 years after the birth of the child is violating the child's rights since, under those circumstances, a child must rely on a third party to file a paternity proceeding. By extending the statute of limitations to 18, children can become aware of the legal status of being born out of wedlock and have the opportunity to file paternity proceedings themselves if they so desire.

For State child support enforcement programs, this new provision could mean a major increase in the number of individuals seeking assistance in paternity establishment. A concern of the Child Support Enforcement Program is the welfare of this Nation's children. Through services to establish paternity, children born out of wedlock can be guaranteed the same claim to their parents' resources as the children whose parents are married.

OUTCOME OF THE PATERNITY ESTABLISHMENT FUNCTION

Once a paternity case has been adjudicated and paternity has been established, the case is transferred over as a child support "pay" case. Since it is highly probable that the case file will be consulted for a determination and enforcement of the support order, all the court orders are copied and placed in the IV-D office file. The IV-D agency also notifies the IV-A agency and any appropriate law enforcement agencies of the outcome of the case.

Closing a paternity case in which paternity has not been established is also a very important procedure in a IV-D agency, because that case can be reopened at some later date. If paternity has not been determined, the mother, the child, or the IV-A or IV-D agency may discover new evidence and wish to reopen the case. When this occurs, the old case file most likely will be requested and used.

FOOTNOTES

/1/ Paul C. Glick. "American Household Structure in Transition," Family Planning Perspectives 16(5): 206, September/October 1984.

/2/ U.S. Department of Health and Human Services, National Center for Health Statistics, Vital Statistics of the United States (annual and unpublished data) Statistical Abstract of the United States (1981), p. 65.

/3/ Portions of this chapter are adapted from Michael Henry, J.D., et. al., Essentials for Attorneys In Child Support Enforcement (Chevy Chase, MD: National Institute for Child Support Enforcement, 1986).

/4/ Portions of the discussions of the process of paternity establishment are based on the Paternity Case Processing Handbook, prepared by Univ. Southern Calif. Ctr. Health Services Res. under SRS Grant 18-P-90432/9-01.

/5/ Howard Bragdon, Medical Technician, et al., Parentage Evaluations: A Biological Analysis for the Legal Profession (Nashville, TN: Dia Clin Laboratory, Inc.), p. 5.

/6/ Baltimore Rh Typing Laboratory, Inc., Genetic Markers Inheritance Paternity Rh Laboratory--Solution (Baltimore, MD).

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/8/ Baltimore Rh Typing Laboratory, Inc., op. cit.

/9/ Joel S. Kolko. Admissibility of HLA test results to determine paternity. Family Law Reporter Monogr. 2, Vol. G, No. 15 (1983).

/10/ Henry Gershowitz, Ph.D., A Guide to Paternity Testing (Okcemos, MI: National Legal Laboratories).

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CHAPTER 6

Assessment of Child Support Obligations

INTRODUCTION

Federal law mandates that State and local child support enforcement programs determine how much financial support an absent parent should be required to pay. The amount and frequency of money to be paid as support by the absent parent are referred to as the child support obligation. When cases enter the system with an existing court order, the amount of the order generally is accepted as the obligation. However, many cases are received with no legally enforceable support obligation. If paternity has been established, and the absent parent has been determined to be legally responsible for child support, the child support enforcement agency must assess how much that support should be.

This chapter explains how the child support enforcement agency assesses an absent parent's financial obligation. Special attention is given to the formulas and guidelines used to determine a parent's share of the financial obligation for his or her child.

ASSESSING SUPPORT OBLIGATIONS

To a large extent, the cost-effectiveness of any child support enforcement program depends on an accurate determination of the financial resources of the absent parent. This determination provides not only the basis for establishing equitable support orders, but also the basis for identification and access to any financial resources. This amount can be set by voluntary agreement or by court or administrative order; however, the child support enforcement agency must first identify the financial and personal circumstances of the parties involved.

It is in the best interests of all parties involved that the support obligation be both equitable and realistic. There is little advantage to establishing a support amount that the absent parent reasonably cannot be expected to pay. If the assessment is excessively high, the absent parent is likely to feel helpless in meeting the obligation. Sizeable arrearages may accrue quickly and discourage the absent parent from making any significant contribution at all. Conversely, a support amount that is set too low places an unfair hardship on the custodial parent and may result in financial deprivation for the child.

In assessing a support obligation, there are two major points at issue: the financial needs of the child(ren) and the absent parent's ability to provide support. Child support enforcement programs throughout the Nation use different criteria for examining these two issues. The following list includes some of the factors that are considered in setting the support amount:

- Earnings and assets of the absent parent
- Earnings and assets of the custodial parent
- Amount of public assistance paid on behalf of the dependent child(ren)
- Age and health of the parents

- Age and health of the child(ren)
- Family's standard of living
- Medical, dental, and educational expenses
- Absent parent's total number of dependents.

The agency needs to gather information on the living standard of the child, if and when living with the responsible parent. The child is entitled to the same standard of living he or she would have experienced had the family remained intact. Attention also should be given to any special needs of the child, such as unusual medical or school expenses. Information about the financial needs of the child and the financial condition of the family generally will come from the custodial parent, and any special circumstances should be documented in the case file.

To determine the absent parent's ability to support his or her child financially, child support workers must gather information that will enable them to assess an appropriate amount of support. Interviews, affidavits, or questionnaires generally are used to solicit the need. With this information, the child support enforcement agency or court can better determine the absent parent's ability to pay and can establish a support amount that is based equitably on the child's needs and the parent's resources.

If the absent parent refuses to cooperate with the child support enforcement agency or if the caseworker suspects that the information provided is incomplete or misleading, further investigation may be necessary to locate undisclosed assets. Many of the agencies and procedures used to locate an absent parent also may help the child support enforcement worker identify an absent parent's assets. Several of these sources are discussed below:

- State employment security agencies. All employers are required by law to provide quarterly statements of their employees' earnings in connection with Federal and State unemployment compensation regulations. Thus, this State agency is an excellent source of information about the earnings of absent parents.
- Credit bureaus. As noted in Chapter 4, credit bureaus provide information pertaining to an individual's real estate holdings, bank balances, motor vehicles, and other financial aspects. The credit record also will include an employment history and a payment record--both of which can assist the child support enforcement agency in assessing an individual's ability to pay child support.
- State and local tax offices. Real and personal property generally is liable for taxes, and contacting the State or local tax office can provide information about assets that could be garnished to fulfill a child support obligation.
- Banks. The custodial parent or other contacts may be able to identify the absent parent's bank; if necessary, financial information could be subpoenaed by the program attorney in a child support enforcement case.
- Division of Motor Vehicles. If an absent parent has a driver's license, he or she may own a vehicle, an asset that could be applied to the child support enforcement obligation.

Once the agency has completed its investigation of the absent parent's financial situation, the information gathered is used to recommend a support amount. The actual order for support will be issued by a court or administrative agency (as discussed in the following chapter). Those agencies that use an administrative process to establish support amounts apply the information gathered about the absent parent's resources to guidelines that determine a support amount. In agencies where this function is performed by the court, child support workers or attorneys frequently recommend to the court that a support order be set at a certain amount.

FORMULAS AND GUIDELINES

A basic concept of the Child Support Enforcement Program is that both parents should share the financial responsibility for their children and that this responsibility should be divided as equitably as possible. Equitable child support orders are important, not only to the families involved but also to the legitimacy of the child support system itself. In the past, there have been huge disparities between support orders of parents with similar resources and abilities to pay. Although these disparities were most obvious when comparing different States or localities, inconsistent awards frequently were granted within a single locality by the same court.

In an effort to guarantee equitable and reasonable orders of support, some child support enforcement programs developed policies and procedures to guide them in assessing an absent parent's obligation. However, not all programs had such guidelines, and the problem of inequitable support orders continued. In fact, as of August 1983, 29 States had no legislated requirements for what a court had to consider in entering a support order. In those jurisdictions, the decision of how much a parent should pay for child support was left to the court, child support enforcement workers, and attorneys. It is therefore not surprising that support obligations tended to be inconsistent and often insufficient to meet the needs of dependent children.

The Child Support Enforcement Amendments of 1984 require all States to establish, by October 1, 1987, through law or administrative action, guidelines for determining support award amounts. These guidelines must be established as a condition of State plan approval. The guidelines must be provided to all judges and other officials who have the authority to determine child support awards.

Developing appropriate formulas is extremely complicated because many factors affect a parent's ability and obligation to pay support. Some of these factors are the absent and custodial parents' income, the number and ages of dependent children and other household or family members, living expenses, cost of living, and special circumstances like a child's health problems. To assess support amounts, many States already have adopted formulas that consider these issues before settling on an amount.

Several attempts have been made to develop objective guidelines that result in predictable, consistent, and equitable support amounts. Judith Cassetty and Frank Douthitt provide a good discussion of this topic.[1] The discussion of guidelines here is based on their article.

According to Cassetty and Douthitt, there are three basic approaches to allocating the support responsibility between parents who do not reside in the same household:

- The cost-sharing approach
- The taxation approach
- The income-sharing approach.

Each of these approaches is discussed below.

The Cost-Sharing Approach

The cost-sharing approach centers on the cost of raising the children involved in a case; it allocates responsibility for that cost between the two parents based on their relative abilities to contribute. One example of a formula that adopts the cost-sharing approach and that has received a significant amount of attention in recent years is the formula espoused by Maurice Franks, a family law specialist in Colorado.[2] Franks suggests the following formulas:

$$OA = \frac{N \times A}{A + C}$$

and

$$OC = \frac{N \times C}{A + C}$$

where

N = Total financial needs of the children
C = Net income or earning ability of the custodial parent
A = Net income or earning ability of the absent parent
OC = Total support obligation of the custodial parent
OA = Total support obligation of the absent parent

Assuming a family of two children with an absent father earning $18,000 per year, a custodial mother earning $12,000 per year, and an estimated need figure for the children of $769 per month,[3] the above formula produces the following obligation amounts:

$$OA = \frac{\$769 \times \$1500}{\$1500 + \$1000} = \$769 \times .60 = \underline{\$461.40}$$

and

$$OC = \frac{\$769 \times \$1000}{\$1500 + \$1000} = \$769 \times .40 = \underline{\$307.60}$$

$$\text{Total} \quad \underline{\$769.00}$$

In jurisdictions that have adopted this approach, such as the State of Oregon, the court generally assumes that the custodial parent is meeting his or her obligation by maintaining the primary home of the children, meeting their recurring needs, and perhaps incurring day care or babysitting expenses in order to work outside the home. After making this assumption, the court orders the absent parent to contribute the amount suggested by the formula (in our example $461.40). The custodial parent's share is assumed to make up the difference between the absent parent's contribution and the actual month-to-month needs of the children.

This approach is effective for allocating the support responsibility in situations, such as the above, where the parents are both employed and making modest to slightly above average salaries. The cost-sharing approach is not effective where the absent parent's income is significantly below or above the middle range. For low-income absent parents, the cost-sharing approach does not resolve, nor purport to resolve, the conflict between the children's demands on the absent parent's income and his or her need to retain a minimal amount of income for self support. The other significant defect is that the focus on need can operate to place a cap on the amount that is ordered. If the needs of the children are determined to be $769 per month, based on the standard of living enjoyed by the family during the marriage, then the absent parent's support obligation cannot exceed that amount, no matter how high his or her income. Most jurisdictions make an upward adjustment by assuming that children's needs are elastic and that they increase in a positive proportional relationship to the available income. The cost-sharing approach certainly does not prevent adjustments to account for low and high incomes, but neither does it suggest how to make such adjustments.

The Taxation Approach

The taxation approach takes its name from its resemblance to income tax tables and from proposals in Wisconsin and California to implement collection of child support through the State income tax structure. The approach relies on tables that set the amount of child support as a percentage of the absent parent's income. For example, the State of Illinois recently enacted several identical statutes that dictate the amount of support to be awarded in various support proceedings.[4] Under these statutes, the Court determines the minimum amount of support by using the following guidelines:

Number of Children	Percentage of Net Income*
1	20%
2	25%
3	32%
4	40%
5	45%
6 or more	50%

* Net income is defined as total gross income minus the following deductions:

- Federal and State income tax (use standard tax)
- Social Security deductions
- Mandatory pension deductions

- Union dues
- Dependent health/hospitalization insurance coverage
- Individual health/hospitalization coverage or medical expense
- Deductions not to exceed $25 a month.

In cases where health/hospitalization insurance coverage is not being furnished to dependents covered by the support order, the courts in Illinois order such coverage and reduce net income by the reasonable cost thereof in determining the minimum amount of support to be ordered.

The taxation approach focuses on ability to pay and assumes that all children have minimum needs that comprise a constant percentage of the absent parent's net income. Where a child has additional financial needs, the custodial parent must convince the court to deviate from the guideline amount. The statute makes it difficult for the court to enter an order in a lower amount by requiring express findings to support such an order.

This approach has several clear advantages and a few less obvious disadvantages. By defining net income as gross income less a list of specific allowable deductions, the statute standardizes and simplifies the process of applying the guideline to each individual case. For instance, the great majority of cases no longer will require evidence regarding the actual expenses incurred by the custodial parent for the support of the children. The court, in effect, can take judicial notice that the needs of the children bear a direct relationship to the absent parent's net income.

Similarly, due to the statutes' reliance on standard tax rates, the Federal and State income taxes actually withheld from the absent parent's paycheck are not relevant. In addition, the prescribed list of deductions, in combination with the last paragraph of the statute, prevents any dispute as to the effect of other debts owed by the absent parent.

One drawback of the Illinois statutes concerns the dependent health/hospitalization insurance coverage. The statute does not specify the level of coverage the absent parent is to provide, and yet the court must have evidence of the cost of the coverage in order to apply the formula. Such a situation may present difficulties to attorneys in cases where the level of coverage and cost cannot be stipulated prior to a hearing. The attorneys need to present evidence of the cost of health insurance coverage but will not know in advance of the hearing what level of coverage the court will require. Presumably, judges will set a precedent over time that will allow attorneys to anticipate the appropriate level of coverage. This practical problem points out that judges and practicing attorneys need to participate in the drafting of support guidelines in order to spot such potential problems prior to enactment.

Taxation approaches in general have two additional disadvantages; one involves the underemployed absent parent. Strict application of the statutory percentage to the low-income obligor may provide neither adequate support for the children nor sufficient income for the absent parent.[1] A second drawback is that such determinations, although intended to be minimum support contributions, may become in practice a ceiling on amounts awarded.

The Income-Sharing Approach

The income-sharing approach assumes that parents should continue to share the economic function of parenting to the fullest extent possible, despite the breakup of the family household. Therefore Income-sharing formulas seek to go beyond the children's minimum needs. An additional component allows for the sharing of additional available income on an equitable basis. Cassetty and Douthitt provide the following formula.[6] Again, the example is for a family with two children, an absent parent who has not remarried and lives alone with a net income of $1500 per month, and a full-time custodial parent with an income of $1000 per month:

$$\mathbf{CS} = \frac{\begin{array}{c}\text{Income of}\\\text{Absent Parent}\end{array} - \begin{array}{c}\text{Poverty Level}\\\text{for 1}\end{array} - \begin{array}{c}\text{Income of}\\\text{Custodial Parent}\end{array} - \begin{array}{c}\text{Poverty Level}\\\text{for 3}\end{array}}{4}$$

$$= \frac{(1500 - 405) - (1000 - 685)}{4}$$

$$= \frac{780}{4} = \text{\$195 (per person share of "surplus" income)}$$

$$= \text{\$585 per month (3 shares of "surplus" income)}$$

The numerator of this formula calculates the amount of surplus income available to the two-household family after covering all four individuals' minimum needs. The poverty level figures are estimates drawn from reports by the U.S. Department of Agriculture and the U.S. Department of Labor. The denominator is the number of individuals to be supported in both households. The result is a per-person share of the surplus income. The child support amount would be $585 per month (3 shares of surplus income).[7]

The income-sharing approach has several advantages. Most importantly, it accounts for some variances both in need and ability to pay--the only approach of the three that can claim to do so. It accounts for the realities of the low-income obligor by granting a minimum needs allowance before requiring a support contribution. (The court presumably could impute income to an underemployed obligor.) The reliance on poverty level figures again replaces the need to adduce evidence as to the actual costs of supporting the children and allows the formula to be adjusted by region or for the disparate costs between urban and rural life. The income-sharing approach is perhaps best at taking into account household economies of scale and changing financial conditions over time. Once the formula is applied to a case, modification proceedings often can be avoided by simply reapplying the formula and stipulating an order based on the new result.[8]

Selecting a Formula

Clearly, there are a variety of potential guidelines for child support awards, and selecting a formula is a complex and crucial task. The National Institute for Socioeconomic Research, under contract to OCSE, conducted a review of 37 State formulas for establishing child support and found a decided range of approaches. Agencies differed markedly in the specification of base income, the proportions of income allocated to child support, and the levels of orders established for absent parents in similar circumstances. In many States, the formulas yielded quite low results when compared to studies of family expenditures, and many formulas were inadequate to deal with broad income ranges (particularly for absent parents at the high or low ends of the range). Another frequent problem identified by the study was the effect of remarriage on the application of a State formula.[9]

In its research of State statutory procedures in establishing support awards, the Institute identified several issues that States should consider when adopting a formula for child support obligations.[10] These are discussed below:

- Assessing financial responsibilities. Virtually all States take into account the income of both parents in setting the award. The needs of the absent parent (including minimum self-support exemptions) as well as a method for counting the income of the custodial parent must be considered. The incomes of current spouses also can impact support responsibilities of absent or custodial parents. Earning potential of either parent should be evaluated, particularly when it deviates substantially from actual income. This would apply to the absent or custodial parent who avoids employment or accepts underemployment to avoid paying support.

- Priority of support. A growing judicial consensus holds that the equal protection clause of the Constitution prohibits discrimination among children by giving priority to earlier offspring for parental support. This issue could affect development of a standard model if it had to take into account the presence of other biological dependents of the obligor.

- Shared custody. Although most Program professionals agree that joint or shared custody should affect the amount of support payments, there is no consensus concerning how to build this into the formula. Even when custody is split evenly between parents, differences in income still could affect child support awards, or child-rearing expenses may not divide easily in proportion to the time the child spends with each parent.

- Indirect costs. Economists project that indirect costs for child rearing may equal direct costs (e.g., shelter, food, clothing) usually considered in setting child support amounts. Child care services are one example of an indirect cost that affects many working custodial parents.

- Updating mechanisms. Many social scientists and legal scholars believe that a regular updating mechanism should be built into a formula to compensate for inflation, value of earnings, and increased costs as children grow. However, most courts have rejected automatic adjustments based on the Consumer Price Index, and in States where formulas have been developed, adjustments generally have required a reapplication of the entire formula rather than a simple inflation or wage-based adjustment.

Despite the problems and issues surrounding support formulas, research strongly supports the positive impact that formulas have had on State child support enforcement efforts. States such as Delaware, Wisconsin, and Washington, which have implemented statewide formulas, report greater equity among orders; greater consistency in support amounts for absent parents in similar financial circumstances; more streamlined operations (since assessment by formula becomes a rather routine process, rather than a case-by-case problem); a valuable framework for voluntary settlements; and higher overall support orders.[11]

Perhaps the most important aspect of selecting a formula is involving the judiciary and the State bar association in the selection process. Although the 1984 Amendments require States to develop a formula for child support awards, there is no Federal law requiring judges to abide by that formula. Thus, formulas have a much better chance of being implemented when the judiciary takes an active role in their development. In Washington, guidelines were developed entirely within the judicial systems. In Wisconsin, the Department of Health and Social Services worked in conjunction with the courts throughout the development and implementation stages.

ASSESSING SUPPORT OBLIGATIONS IN INTERSTATE CASES

If an initiating State determines that an absent parent resides in another State, it must forward to that State all information gathered through intake and locate efforts. The responding State is responsible for assessing the support obligation of the absent parent.

Unfortunately, when responding to interstate cases, many jurisdictions do not conduct follow-up investigations to obtain additional information regarding an absent parent's ability to pay. Without such investigation, the responding jurisdiction cannot assess the absent parent's ability to pay or conduct well informed and effective negotiations. In addition, the case often goes to hearing without any admissible evidence on the most important issue to be decided--the amount of the support obligation. A common strategy is to rely on the absent parent to present his or her financial situation on the witness stand, perhaps through questions based on the testimony form of the custodial parent. This is clearly undesirable. The result is inequitable and insufficient current and past-due determinations.

There are two reasons for these interstate problems. First, Federal regulations do not establish the respective responsibilities of the two States. Many State and local agencies have reacted by assuming that the responsibility for gathering relevant data always falls on "the other State." Second, in most States, the child support enforcement agency does not track and monitor incoming interstate cases, although it often conducts the bulk of the information gathering for intrastate cases. These poorly documented cases are often the reason local prosecutors are ill-equipped to conduct effective investigations.[12]

States must establish effective procedures for applying the same full range of financial information resources to incoming interstate cases that are applied to intrastate cases. Unless this begins to occur routinely, interstate cases will continue to be returned to the initiating State for investigation or will continue to proceed to hearing in the responding State without sufficient evidence. With the recent development and implementation of standardized URESA forms, many of the problems previously faced by the State in regard to URESA have been addressed.

When a responding State receives a case that requires obligation assessment, it must first determine whether it has all of the information needed about the custodial parent's finances and any special needs of the child(ren). If more information is needed, the enforcement worker may get in touch with the initiating State. However, it is most important that the absent parent and his or her assets be located as soon as possible to assure that all evidence used in the support order hearing is timely and accurate. When all the pertinent information is collected, the responding State makes its assessment based on the same formula it uses for intrastate cases. This determination is then submitted to the court exactly as it is for an intrastate case.

OUTCOMES OF THE ASSESSMENT FUNCTION

Determining the financial resources and support obligations of absent parents is an important responsibility of all child support enforcement programs. The primary consideration in making these assessments is to protect the interests and needs of the absent parents and their children; each State must determine which formula and which guidelines it will use to achieve this goal most equitably.

Once the assessment is made, an order of support must be established. What is included in these orders, how they are established, and the regulations governing the establishment process are discussed in the next chapter.

FOOTNOTES

/1/ Judith Cassetty and Frank Douthitt, "The Economics of Setting Adequate and Equitable Child Support Awards," Texas State Bar Report, Family Law, 1984 Special Child Support and Visitation Issue.

/2/ Franks, "How to Calculate Child Support," 86 Case & Comment 3 (1981); "Summing Up Child Support: A New Formula," 7 Dist. Law 28 (July/Aug. 1983); and Polikoff, "The Inequity of the Maurice Franks Custody Formula," 8 Dist. Law 14 (Nov./Dec. 1983).

/3/ Cassetty and Douthitt derive this need figure from an estimate made by economist Philip Eden in Estimating Child and Spousal Support: Economic Guidelines for Judges and Attorneys (San Mateo, CA: Western Book Journal Press, 1977).

/4/ Ill. Pub. Act 83-1404, 1984 Regular Session.

/5/ The passage of a percentage guideline statute may support an argument that the court may no longer impute income to the obligor based on ability to earn.

/6/ See Footnote 1, supra.

/7/ Cassetty and Douthitt recognize that allowing the custodial parent a share of the surplus income could be viewed as an implicit form of alimony but point out that any other method would require the deletion of the custodial parent's income from the numerator. Doing so would defeat the income-sharing aspect of the approach and ignore the economic realities of the situation. Ibid., p. 12.

/8/ The most extensive use of an income-sharing approach has been tried in the State of Delaware, which employs the Melson Formula. It is beyond the scope of this Guide to explain the many variations of the Melson Formula. For a detailed explanation see "Delaware Child Support Formula," Family Court of the State of Delaware, July 1984. (Available from the National Reference Center of the Office of Child Support Enforcement, Rockville, MD.)

/9/ National Institute for Socioeconomic Research, Review of Selected State Practices in Establishing and Updating Child Support Awards, prepared for the Office of Child Support Enforcement, Department of Health and Human Services, under Grant 18-P-00258-8-01 (Baltimore, MD: Social Security Administration Print. Off., 1984).

/10/ National Institute for Socioeconomic Research, Review of Literature and Statutory Provisions Relating to the Establishment and Updating of Child Support Awards, prepared for the Office of Child Support Enforcement, Department of Health and Human Services, under Grant 18-P-00258-8-01 (Baltimore, MD: Social Security Administration Print. Off., 1984), pp. 46-47.

/11/ National Institute for Socioeconomic Research, Review of Selected State Practices in Establishing and Updating Child Support Awards, pp. 50-51.

/12/ Center for Human Services, Interstate Child Support Collections Study (Washington, DC: U.S. Department of Health and Human Services, May 1, 1985).

CHAPTER 7

Establishing an Order of Support

INTRODUCTION

Once a parental relationship has been determined--through marriage, adoption, or paternity establishment--the parent's legal responsibility to pay financial support must be established. The preceding chapter described methods and procedures used to determine the amount of child support a parent should be required to pay. This chapter explains how these assessed amounts become legally enforceable financial obligations.

The traditional process for establishing a support order involves a full court hearing, with a judge making the determination based on evidence presented from both parties. While the partnership between the Child Support Enforcement Program and the judiciary is important to the success of the Program, the traditional court process has created a number of problems. Most particularly, crowded court dockets and subsequent child support case backlogs have slowed down the entire child support process. Significant delays in establishing orders mean that many absent parents continue to escape their financial responsibilities to their children, with taxpayers all too often shouldering this burden through the expenditure of welfare payments to support these families.

In response to this problem, the Child Support Enforcement Amendments of 1984 require States to establish expedited processes for child support enforcement. Expedited processes are designed to speed up and improve the processes of establishing and enforcing a support obligation and, at each State's option, establishing paternity. They generally take the form of an administrative process or a quasi-judicial process. Both forms are discussed in this chapter, following a discussion of the traditional court establishment process.

Whether established through traditional judicial or expedited methods, the child support order is crucial. Without an order, there is no legally enforceable obligation. Without the legal obligation, attempts at collecting support may be difficult and enforcement impossible.

OBTAINING COURT ORDERS FOR CHILD SUPPORT

To obtain a court order for child support, the child support enforcement agency (on behalf of the State, the caretaker parent, and the child) must notify the court that there is an issue of law that needs to be resolved. In these cases, the issue is related to the legal responsibility of all parents to provide financial support for the care, maintenance, and education of their children.

A common approach used to initiate court action for establishing child support orders involves filing a petition with the court and requesting that the case be heard and resolved. The petition may be filed by the child support enforcement agency (generally through a program attorney) or by a representative of the district attorney's office working under cooperative agreement with the IV-D agency. A petition for support alleges that the absent parent resides within the court's jurisdiction and that he or she is the parent of the child(ren) for whom support is being sought. Although the procedures for filing petitions may vary slightly among State or local programs, the general procedure is to verify the petition (usually by having the custodial parent sign the document), have it notarized, attach relevant affidavits, and submit it to the court. The court then will issue an order that requires the absent parent to appear for a hearing. In most jurisdictions, the sheriff's office will serve the absent parent with the order.

The absent parent has a period of time stipulated by State statute in which he or she must respond to the petition. The absent parent generally contests either paternity or the amount of support requested in the petition. However, on receiving the petition, the absent parent often is willing to negotiate settlement with the child support enforcement agency rather than face court action. Many States allow the agency to enter into a consent agreement with the absent parent. This is equivalent to a stipulation by contract, and, on approval by the court, it carries the same weight as a court-ordered obligation. Clearly, consent agreements have the advantage of eliminating both the adversarial nature of a court proceeding and the lengthy waiting period for a court hearing.

When nonsupport cases are presented in court, the judge hears evidence presented by both parties in the action. Generally evidence is presented by the child support enforcement agency's or the State's attorney and by the attorney representing the absent parent. The judge determines the obligation of the absent parent, the amount of child support to be paid, and the frequency and methods for making those payments.

Under the Child Support Enforcement Amendments of 1984, the Secretary of DHHS was required to issue regulations requiring State agencies to petition the court to include medical support as part of any new or modified child support order when dependent coverage is available to the absent parent at a reasonable cost. Generally, insurance is available to an absent parent through his or her employer. The intent of this medical insurance provision is to reduce Medicaid costs associated with families on public assistance and to ensure medical support for children. Child support enforcement workers should investigate the availability of insurance coverage during preliminary interviews with the absent parent and provide relevant information to the program attorney who should pass it on to the court or administrative agency issuing the support order.

One of the difficulties involved in processing cases through the courts is that the case then moves outside the child support enforcement agency's control and is affected by factors such as crowded court dockets, availability of legal assistance, attitudes of judges and court personnel, and the cooperation of local law enforcement officials. For these reasons, more States are passing the necessary statutes and regulations to establish expedited judicial and administrative processes. As noted above, the Child Support Enforcement Amendments of 1984 require each State to enact and implement expedited processes for establishing and enforcing child support obligations and, at the State's option, for establishing paternity. However, the Amendments provide that a State may be granted an exemption from implementing expedited processes based on the effectiveness and timeliness of support order establishment or enforcement in the State. States must apply for and meet the conditions for an exemption set forth by OCSE.

Federal regulation at 45 CFR 303.101(a) defines expedited processes as "administrative or expedited judicial processes [that] increase effectiveness and meet processing times specified in paragraph (b)(2) of this section and under which the presiding officer is not a judge of the court." States were required to have expedited processes in effect by October 1, 1985, or, if legislation is necessary, within four months after the first State legislative session that ends on or after October 1, 1985.[1] After implementation, actions to establish or enforce obligations in IV-D cases must be completed from time of filing to time of disposition with the following time frames: 90 percent in 3 months; 98 percent in 6 months; and 100 percent in 12 months.

EXPEDITED JUDICIAL PROCESSES

The concept of an expedited judicial process for child support establishment and enforcement has been in existence since at least 1919, when the Michigan legislature authorized its Friend of the Court System. Other States with similar provisions include Delaware, Indiana, Minnesota, Nebraska, New York, Pennsylvania, Rhode Island, Texas, Utah, and Wisconsin. Of these States, Delaware, Michigan, Pennsylvania, Rhode Island, and Wisconsin have implemented the process as their main or exclusive establishment and enforcement mechanism.

For this discussion, we define expedited judicial process as a legal process in effect under a State judicial system that reduces the processing time of support order establishment and enforcement pursued through full judicial process. To expedite case processing, our model concept assumes judge surrogates with minimum authority to:

- Take testimony and establish a record
- Evaluate and make initial decisions
- Enter default orders if the absent parent does not respond to notice or other State process in a timely manner
- Accept voluntary acknowledgment of support liability and approve stipulated agreements to pay support, and, if the State establishes paternity using this judicial process, authority to accept voluntary acknowledgment of paternity
- Conduct hearings and make findings and recommendations in interstate cases, a requirement under the Child Support Enforcement Amendments of 1984.

Judge surrogates often are referred to as court masters, referees, hearing officers, commissioners, or presiding officers with the above-described authority.

Typical Expedited Judicial Procedures

State statutes that authorize the appointment of judge surrogates sometimes provide general authority without much direction and sometimes set out the procedure in great detail. When the statute is general, the judiciary normally will fill in the details with court rules.

In establishing an expedited judicial process, a State may establish two alternatives from which each judicial circuit may choose. The first option would provide for a mandatory office conference, presided over by a "conference officer," who need not be an attorney. If the case cannot be settled at the office conference, the matter is referred to the court for hearing. The second option also would employ the office conference, but hearings would be presided over by a master in lieu of the court. The court may review the master's decision.

The office conference gives the procedure the look and some of an advantages of an administrative process (discussed below). There are two advantages to including a conference. First, in many cases, the parties will agree on an amount of support and a final order will be prepared to be entered by the court without a judicial hearing. Second, the process of preparing for and conducting the office conference will allow the conference officer to conduct informal discovery into the facts of the case. Should the matter go before the judge, the court file should contain useful information for attorneys during the court hearing. The court hearing no longer functions as an "intake interview," except with respect to hotly contested issues.

The Pennsylvania procedure, for example, makes maximum use of the conference, including the conference officer recommending entry of an order and the amount. The court may act on the recommendation, subject to review upon written request, or the court may defer action, in which case a hearing automatically follows.

Important features of a conference procedure are as follows:

- The order attached to the complaint may direct the parties to bring to the conference certain documents, including their most recent Federal income tax return, their pay stubs for the preceding 6 months, and a completed income and expense statement. This information establishes a meaningful basis for the conference.

- The conference officer may informally recommend to the parties the amount of support that should be ordered. If an agreement is reached, the officer will prepare a written order confirming the agreement. The signatures of the parties appear on the proposed order to signify their agreement. The court, at its discretion, then may enter the order as the final order of support without further hearing.

- Even if the parties agree on an amount of support, the officer is still empowered to recommend that the court disapprove the agreement. This authority encourages the conference officer to fulfill the traditional judicial function as protector of the best interests of the child(ren) and prevents a destitute spouse from agreeing to the entry of an unreasonably low order in exchange for some other item or right.

- Where the parties do not reach an agreement for a support order, the officer prepares a conference summary and recommendation to be furnished to the court and, on request, to the parties. It contains the facts on which the parties agree, their contentions on disputed issues, and the recommended amount and effective date of a support order. The file and summary then are transmitted to the court.

- The judge reviews the file and conference summary to determine whether a support order should be entered and, if so, whether the recommendation of the conference officer is appropriate. After careful consideration, the court may decline to enter an order, enter an order based on the recommendation, or enter an order that varies from the recommendation. If the court declines to enter an order, then a hearing will be held before the court without further action by the parties.

- If the court enters an order based on the file and conference summary without hearing the parties, the rule requires that the order notify the parties of their right to demand a hearing before the court and the procedure that must be followed to demand a hearing. The order, however, remains in effect as a temporary order pending the hearing, unless the court grants a stay. If an order is entered and no party files a demand for hearing, then the order becomes a final order.

In judicial districts with the alternative hearing procedure, there is still an office conference, but the conference officer does not file a report and recommendations. If the office conference fails to produce an agreement, the matter is referred to the permanent hearing officer, who must be an attorney. The parties are notified of the date, time, and place of hearing. Prior to the hearing, the parties may request discovery action to gather information not disclosed at the office conference.

The permanent hearing officer acts as judge surrogate to receive evidence, rule on objections, hear arguments, and file with the court a report containing a recommendation as to the terms of a support order. A stenographic record of the trial preserves the testimony for possible subsequent judicial review. The hearing proceeds in a manner substantially similar to a regular court hearing, sometimes even using a courtroom as a setting. Both sides typically are represented by counsel. The permanent hearing officer is an impartial participant at the hearing with the additional charge of protecting the best interests of the child. The normal rules of evidence apply.

After the hearing, the hearing officer prepares a report and recommendations. The report may be in narrative form but must set forth the specific terms of the order, such as the amount of support, by and for whom it is to be paid, and its effective date. A copy of the report is furnished to all parties.

Within 10 days of the hearing, any party may file exceptions to the report, to the permanent hearing officer's rulings on the admissibility of evidence, to statements or findings of facts, to conclusions of law, or to any other matters occurring during the hearing. If no exceptions are filed within the 10-day period, the court must review the report and, with the judge's approval, enter a final order.

If exceptions are filed, the court reviews the record placed before the hearing officer, as prepared and submitted by the parties. There is no hearing before the court. Like the appellate court in a regular judicial process, the court hears oral argument and enters a final order. The court generally will refrain from substituting its opinion for that of the hearing officer regarding issues of fact, especially where the credibility or oral testimony may have affected the hearing officer's decision. If the court finds insufficient evidence in the record to support the hearing officer's decision, the court may remand the case for further proceedings before the hearing officer. The court normally will deviate from the recommendation of the hearing officer only where it finds that the hearing officer's report and recommendations contain a mistake of law.

The order entered by the court, after hearing the arguments and reviewing the record, is final. If a party disagrees with both the hearing officer's report and the final order entered by the court, he or she must seek relief in the appellate courts.

Variations in Other States

As noted above, Delaware, Pennsylvania, Michigan, Rhode Island, and Wisconsin use expedited judicial systems extensively in the establishment and enforcement of child support obligations. The systems in these States resemble the model procedure. Few, however, have a formalized office conference procedure that can result in an enforceable order in a default situation. While the authority of judge surrogates varies from State to State, they generally have the authority to (1) hold hearings and compel witnesses, (2) enter orders or recommendation orders to the court, and (3) make findings of fact in divorce, annulment, and separation cases, child support and maintenance cases, paternity cases, child abandonment and neglect cases, and juvenile justice cases.[2]

One advantage of an expedited judicial process that extends to areas other than child support and paternity is an ability to resolve collateral issues, such as visitation, while a child support or paternity proceeding is pending. This may not maximize the system's responsiveness to the child support caseload, but it does provide a service to absent parents who might otherwise feel the system is one-sided.

Several States have combined their expedited judicial process with local court administration of many IV-D responsibilities. In Michigan, for example, the Friend of the Court System has been in effect since 1919 to supervise child custody, visitation, and support cases. The office of the Friend of the Court also receives, disburses, and monitors payments and investigates and prosecutes absent parents who fail to comply with their support obligations. The Friend of the Court, hired and supervised by the court, also supervises the preparation of the reports to the court regarding custody and visitation issues. The court also has the authority to appoint referees to act as judge surrogates in proceedings initiated by the Friend of the Court or referred by the court.

ADMINISTRATIVE PROCESSES

All State legislatures have the authority to set up executive agencies or boards to resolve disputes and claims. These agencies or boards are governed by administrative law, the branch of public law that deals with the limits placed on the powers and actions of administrative agencies. In addition, all States can devise and implement procedures for operating these agencies or boards. These procedures, which vary from State to State and from agency to agency, constitute administrative processes.

Definition

For this discussion, "administrative process" is defined as a statutory system granting authority to an administrative agency to determine paternity and to establish and enforce child support orders. This definition is understood best by analyzing each phrase.

A statutory system. State legislatures must enact statutes authorizing the administrative process. State constitutions prohibit agencies from assuming legislative or judicial authority without specific statutory delegations. Before an agency is authorized to determine support obligations (by establishing rules of general applicability and by applying those rules to specific cases) a statute must be in place.

Granting authority to an administrative agency. The statute must authorize the agency to make determinations in contested cases and must provide some way to enforce these determinations.

In addition, when a State legislature gives a State agency the authority to act in a judicial capacity, there are usually some substantive and procedural matters too detailed for the legislature to address specifically in the law. So that the agency may address these matters, the legislature also gives the agency rule-making authority. Rules promulgated by an agency under that authority carry the weight of law. Thus, in an administrative process, a State agency acts in both judicial and legislative capacities.

The "administrative" or "executive" agency is usually a subdivision of a State's executive branch, such as the human services department, the revenue and taxation department, or any other agency reporting to the Governor. However, the agency may report to another executive official such as the Attorney General or the State treasurer or to a commission created and supervised by the legislature. Most child support enforcement agencies are within the State social or human services agency. (For this publication, administration agency, executive agency, and State agency all refer to the State agency that administers the Child Support Enforcement Program.)

Determination of paternity. The executive agency may be granted the authority to determine paternity in addition to setting child support obligations. Normally, a formal hearing is necessary to establish paternity when the alleged father contests the issue. The agency also may be authorized to establish paternity without holding a hearing in uncontested cases, in cases where the alleged father has acknowledged paternity in writing and in cases where the alleged father and the mother have married after the birth of the child.

Establishment and enforcement of orders. Through administrative adjudication, the executive agency can enter an order similar to a court order requiring the parent to pay a specific amount of child support per month and to repay the State for public assistance paid to his or her family in the past. Once the order is entered, if the parent fails to pay, the executive agency may be entitled to withhold the parent's wages or to seize other property and credits to collect the money due.

Constitutionality

Placing traditionally judicial functions in an executive agency raises some questions. The question most often heard is, "Are administrative determinations of child support obligations constitutional?" Those who ask this question generally are expressing two major areas of concern:

- May the legislature delegate this traditionally judicial area to the executive branch of government?
- May child support obligations be established and enforced by an executive agency without violating a responsible parent's right to due process of law?

The first question is one of State constitutional law. The answer depends on the authority the State's constitution gives to the State legislature. Generally, State legislatures have broad authority to determine the rights and responsibilities of their citizens and to establish processes for enforcing those rights and responsibilities. Certainly, if a State has a workers' compensation statute, there is precedent for placing previously judicial functions in an executive agency. Many State supreme courts have had the opportunity to consider whether delegating the authority to receive workers' compensation claims to an administrative agency violates the State constitution. Such delegations have not been held to violate State constitutional restrictions.

The second question raises a more fundamental Federal (and State) constitutional problem. The 14th Amendment to the U.S. Constitution provides that a person "shall not be deprived of life, liberty, or property without due process of law." The U.S. Supreme Court has established some important criteria for due process. These fall into three general areas:

- Right to notice
- Right to a hearing
- Right to judicial review of administrative action.

A person has a right to be notified of any action being taken that concerns his or her liberty or property. All child support administrative processes require the executive agency to notify the responsible parent of the amount being claimed and the procedure for contesting the claim. These statutes further require that the executive agency serve the notice in a manner reasonably calculated to give the responsible parent actual notice.[3]

The courts also have specified the type and quality of hearing necessary before a person is deprived of property. The hearing must be fair and impartial, and the person entitled to the hearing must have reasonable opportunity to present evidence through documents or witnesses, confront the opposing party, and refute any evidence.[4] Administrative processes presently in use allow the alleged responsible parent to present all evidence in his or her favor with the aid of an attorney if desired.

The administrative decision must be in writing and must be based solely on evidence submitted at the hearing.[5] A proper hearing includes the right to appeal to a judicial authority. In all administrative child support processes, the responsible parent may request that a higher authority review the facts on which an order is based or the law that was applied. In all the processes, questions of law may be appealed to the judiciary.

Establishing Obligations

The administrative process may be used to establish the initial support obligation in cases that do not already include court-ordered support. The obligation may be used to determine the amount of arrearages due under an existing judicial order. The procedures for obtaining the administrative order under these two situations are similar. In this chapter, both are considered "establishing a child support obligation."

The child support enforcement agency must locate the absent parent prior to considering the case for administrative process. Usually the agency will conduct an initial inquiry into the absent parent's financial situation through information available from other State agencies (e.g., taxation or employment security) or from formal or statutorily mandated devices such as absent parent financial statements or employer reports. When no order exists, this information may be used to compute the amount of the child support obligation. Additionally, income or assets for enforcement of an existing administrative or judicial order also may be discovered. Once the absent parent is located, the State child support enforcement agency will prepare a notice of the child support obligation. The typical administrative process will follow the five steps described below.

Step 1: Notice of the child support obligation. The state agency obtains jurisdiction over the absent parent by serving him or her a notice of the child support obligation by personal service, certified mail, or in some States first class mail, return receipt requested. Under existing State statutes, the notice must contain, at a minimum:

- The names of the children for whom support is sought
- The rights of the absent parent, including the rights to a hearing and representation by an attorney
- Notice that a default order can be entered if the absent parent does not respond to the notice
- Notice that the absent parent must respond within a reasonable period of time specified by the State
- Notice that the absent parent may appeal an administrative determination to a court of competent jurisdiction
- An allegation of debt owed to the State for past assistance provided to the parent's dependents (often referred to as "State debt")
- The amount of current support to be paid or arrearages that have accrued under an existing order
- Instructions on how to obtain a negotiation conference
- A list of the various collection actions that may be instituted once the administrative order is entered.

Step 2: The absent parent's response. The absent parent may respond to the notice in one of four ways:

- He or she may fail to take any action within the time specified in the notice, in which case he or she will be in default. The agency then may enter a default administrative order in the amount alleged in the notice.
- He or she may consent to pay the amount requested in the notice, in which case the agency will enter a "consent" or "stipulated" administrative order consistent with the notice.
- He or she may request a negotiation conference with the agency at which he or she will argue for a support amount different from that requested in the notice. If negotiation is successful, the absent parent and the agency will enter a "consent" or "stipulated" administrative order.
- If the amount of child support, State debt (or payments to be made on the State debt), or arrearages due cannot be agreed on during negotiation or if the absent parent refuses to negotiate, he or she may request a hearing by filing a formal request within the time set by statute. If the absent parent does not request a hearing, the agency may enter a default administrative order, based on the obligation alleged in the notice.

Step 3: The administrative hearing. When the absent parent makes a timely request for a hearing, the case is scheduled before an administrative hearing officer. Usually, the agency worker or an attorney represents the agency in the administrative hearing, and the absent parent represents himself or herself or is represented by an attorney.

The administrative hearing officer is a State employee, usually appointed by the agency director. The State statute may provide that hearing officers be employed by a separate agency, such as the Attorney General's Office. The hearing officer represents no one and conducts and controls the hearing as an impartial examiner of the facts. The administrative hearing usually must be a hearing of record. A file is maintained; all pleadings, memorandums, and physical evidence are labeled, and all testimony is recorded. Most often, the hearing is tape-recorded. The record is preserved for a period prescribed by statute or rule and is transcribed for review if the absent parent appeals the hearing officers's decision.

The rules of evidence in an administrative hearing are less formal than in court. Most States have enacted a version of the Revised Model State Administrative Procedure Act (APA). Sometimes the APA is cross-referenced in the administrative child support statute so that its procedural provisions apply. The APA prescribes the form (oral testimony, documents, and affidavits) and the admissibility of evidence. Evidence not normally admissible in a court of law (certain types of hearsay, for example) may be admitted by an administrative hearing officer if he or she determines that the evidence is reasonably reliable.

In an administrative hearing, as in civil judicial proceedings, the burden of proof or "risk of nonpersuasion" is generally on the party who initiates the action (i.e., the State agency). This means that the agency first presents evidence that establishes its case, and then the absent parent attempts to counter this evidence. As specific elements of a case, the State may want to show that the absent parent owes a duty of support, that the absent parent has not complied with an existing court order, the absent parent's ability to provide support, and the State's witnesses and present his or her own evidence, which the State may rebut. The hearing officer weighs the evidence and rules in favor of the State or the absent parent, depending on whose evidence is more persuasive.

Some State administrative process statutes impose a "show cause" requirement on the absent parent. This lessens the agency's burden of proof by requiring the absent parent to prove that he or she should not be required to meet the agency's demands or that he or she does not owe the amount of support arrearages claimed. In this case, if the absent parent does not "show cause" why the administrative order should not be entered in the amount requested, the hearing officer must rule in favor of the agency.

Step 4: The administrative order. The final decision and order recites, in writing, pertinent facts of the case (e.g. names, birthdates, employer, and income) and the legal conclusions drawn (e.g., duty of support and amount of the obligation and arrearages). The order also contains important information such as where, how, and when support payments are to be made; the consequences of nonpayment; and notification to the absent parent of his or her right to, and the method and time limits in applying for, review of the agency's decision. The order may be filed with the court, or it may be maintained internally by the agency, depending on the statute.

Step 5: Review of the administrative order. Most States' administrative process statutes contain specific provisions describing the nature of review and how review must be requested. Most States provide for direct judicial review of the administrative order, although some allow for an initial internal agency review by an agency official or review board.

Regardless of specific statutory provisions for judicial review, all executive agency decisions that affect an individual's rights or property are subject to judicial scrutiny. Review ensures that statutory procedures have been followed, that Constitutional rights have been protected, and that the agency's decision is supported by substantial evidence. If the administrative process statutes of the State do not specify a review process, nonstatutory remedies developed by the courts may apply (e.g., writs of prohibition, certiorari, or mandamus). In addition, if the administrative process statute or State APA do not specify a procedure for requesting judicial review of the agency's order, the absent parent may apply to the courts for equitable relief against the enforcement of the administrative order and, at the same time, challenge the validity of the administrative order.

State statutes commonly provide for judicial review "on the record." If the absent parent requests judicial review, the agency prepares a complete record of the administrative proceedings, including all documents filed and a transcript of all oral testimony. The parties may file briefs and make oral arguments before the court; the court examines the record and considers legal arguments. The court may affirm the agency's decision or remand (return) the case to the administrative agency for a new hearing or a new order to be entered in compliance with the court's findings. In this type of judicial review, the court generally does not weigh the evidence again or substitute its judgment for that of the hearing officer. The court may reverse or modify the agency decision only if substantial rights of the absent parent have been prejudiced during the constitutional provisions or if the administrative decision violates statutory or constitutional provisions, exceeds the agency's statutory authority, or is not supported by substantial evidence. Alaska and Virginia allow the court the option of either reviewing the agency record or holding a new hearing.

Some States allow an agency official or agency review board to review the administrative order. Under this type of review, the official or board may exercise a review on the record, much like the judicial review on the record, or the agency may allow a new administrative hearing. If there is a provision for internal review of the administrative order, the absent parent generally must exhaust all administrative remedies before seeking judicial review.

ESTABLISHING SUPPORT ORDERS IN INTERSTATE CASES

The problems of establishing a support order are compounded when the absent parent and dependent child live in different States. In response to the need for a simple, inexpensive, and consistent interstate process, the Uniform Reciprocal Enforcement of Support Act (URESA) was developed. URESA provides a uniform process for using the courts of another State without traveling to that State or becoming subject to the jurisdiction of that State's courts for other purposes.

The two-State URESA proceeding begins with the filing of a petition in a court in the State where the custodial parent and child(ren) live (the initiating State). The judge of that court reviews the documents to determine whether the allegations establish an existing duty of support and whether the responding State appears to have jurisdiction over the absent parent or his property. If the judge finds these elements, the proceeding is certified to the proper court in the responding State, where the support obligation is established and enforced.

When the responding State is asked to make an independent determination of the absent parent's support obligation, the proceeding is referred to as a "straight" URESA action to differentiate it from proceedings under the URESA registration provisions. Chapter 6 discusses the responsibilities of a responding State that is asked to assess the absent parent's ability to pay support. Registration of out-of-State orders is discussed in Chapter 8, as is the use of URESA as a tool for enforcing existing out-of-State orders.

States use a wide variety of organizational structures to process interstate support orders. Rarely does any one State office or agency have the responsibility for processing every aspect of each incoming or outgoing URESA case. A common organizational structure uses IV-D attorneys to file outgoing URESA petitions and the county or district attorney to handle incoming URESA cases. This is a logical approach because many URESA cases begin as IV-D cases that the agency is pursuing under an assignment of support rights or on behalf of an application for non-AFDC services. In these cases, the IV-D agency has prepared the case fully and has located the absent parent through its system of interstate cooperation. This approach allows the IV-D agency to continue handling the case and file the URESA petition. The IV-D agency enters into a cooperative agreement with the local prosecutor to handle child support cases. Under such an agreement, the prosecutor may hire an assistant to handle child support matters and be reimbursed for local costs at the applicable rate.[6]

The remainder of this chapter discusses the procedures followed by initiating and responding States under the URESA statute. The following procedure is applicable to cases where the responding State is establishing a support order and when the responding State is merely enforcing an existing out-of-State order.

Any person to whom a duty of support is owed may initiate an action in a court having jurisdiction to handle URESA actions. If the State is furnishing financial assistance to a custodial parent, the State can initiate a proceeding under URESA so that the State may be reimbursed for support it paid to the abandoned family.

The URESA statute sets forth minimum information requirements for the petition that is to be filed in the child's home State. The petition must include:

- Names of the parties
- Address and, as far as is known, the circumstances of the absent parent
- Names, addresses, and circumstances of the children for whom support is sought
- All other pertinent information.

The statute further invites the petition drafter to include a description and photograph of the absent parent to assist the responding State in identifying and locating him or her.

Based on the petition or after a hearing, the court makes a finding that consists of two components: (1) that it appears the absent parent owes a duty of support to the child, and (2) that it appears the court in the responding State has jurisdiction over the parent or the parent's property. These two findings are stated in the Judge's Certification. The certificate may contain a request that the responding State arrest the absent parent, if arrest is permissable under State law and the court is persuaded that the parent might flee in response to being served with URESA notice.

The certificate often contains an order directing the court clerk to forward the pleadings and certificate to the responding jurisdiction. The clerk in the child's home State forwards three copies of the petition, with attachments, and one copy of the initiating State's URESA statute to the responding State. One copy is for the responding court, one for the prosecuting attorney in the responding jurisdiction, and one for service on the absent parent. If the clerk of the initiating court does not know the identity and address of the responding court, he or she may send the documents to the State Information Agency in the responding State, which will forward them to the proper court.[1] The standardized URESA forms should greatly simplify this procedure.

On receipt of the petition and attached documents, the clerk in the responding court dockets the case and notifies the prosecuting attorney of the action. The prosecutor first attempts to locate the absent parent. If the prosecutor has insufficient information and is unable to locate the parent, the statute directs the prosecutor to inform the court of what he or she has done and request the court to continue the case until they receive more accurate information or an amended petition from the initiating court.

If the absent parent is located in another judicial district or in a different State, the responding court must forward the documents to that district or State and must notify the initiating State. The court to which the documents are forwarded must treat the documents as though they were forwarded from the initiating State.

Once the case is filed, the clerk of the court will pass the documents on to the sheriff for service. Some States treat the URESA proceeding as a "show cause" situation. In these States, a show cause order must accompany the pleadings. In other States, the action begins with a normal civil summons, advising the absent parent that he or she has so many days to answer to avoid the entry of a default judgment against him or her.

If the responding court believes (based on evidence heard) that the obligor may flee the jurisdiction, it may have the absent parent arrested. The court may release the absent parent on his or her own recognizance or may set bond to assure his or her appearance at the hearing.

Hearings, more informal than a full trial, are held in URESA cases. If the prosecutor submits evidence to support the petition and counters any defense raised by the nonsupporting parent, and the court enters a support order at the end of the hearing. In most States, the order may include a statement of arrearages due under any existing order and, in addition, a new and independent order for future support.

OUTCOMES OF SUPPORT ORDER ESTABLISHMENT

Once a child support order has been legally established, an absent parent is required by law to abide by it, just as if were a business contract. This is beneficial for several reasons. First, it eliminates the personal struggle a custodial parent is likely to have if the absent parent does not wish to take responsibility for raising his other children. In addition, a support order can be used as court evidence if an absent parent becomes delinquent in his or her payments. Finally, because an impartial party (the agency or the court) has made the determinations and set the procedures for payment, an absent parent is likely to feel he or she is getting a fair deal--increasing the odds that support will be paid, thus reducing the burden on the custodial parent and the taxpayer.

The issues of distribution and collection, enforcement, and monitoring support cases are discussed in full in the following chapters. All of these functions require the support order that will have been established through procedures discussed in this chapter.

FOOTNOTES

/1/ Exemptions are available on a Statewide basis pursuant to 45 CFR 302.70 and for individual political subdivisions pursuant to 45 CFR 303.101(e).

/2/ National Conference of State Legislatures, *A Guide to State Child Support and Paternity Laws* (Denver, CO: 1983).

/3/ *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950).

/4/ H. Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267 (June 1975), p. 1279.

/5/ *Id*., p. 1283.

/6/ For details see Center for Human Services, *Interstate Child Support Collections Study* (Washington, DC: Dept. of Health and Human Services, May 1985), pp. 43-96.

/7/ A list of State information agencies appears in the National Child Support Enforcement Association's *National Roster and URESA/IV-D Referral Guide* (Des Moines, IA, 1984).

CHAPTER 8

Enforcing Child Support Orders

INTRODUCTION

The enforcement function includes all activities devoted to ensuring that parents meet their established financial obligations of support. Technically enforcement begins only after the absent parent has defaulted in meeting the required payments under an established support order. At this point, the child support enforcement agency must initiate actions to collect the delinquent payments.

At each case processing step, a caseworker's decisions must be directed toward developing a case that can be enforced if the absent parent fails to comply with the established support obligation. Although in many situations an absent parent dutifully complies with the support order, in many others payments become irregular or cease altogether. When this happens, the child support enforcement agency must intervene to regulate payments and ensure compliance with the support duty.

Because of the differences in organization, procedures, policies, and laws that affect child support enforcement programs in the United States, approaches to enforcement and available techniques vary widely. This chapter describes approaches and remedies generally used by all programs. The first section describes initial efforts for enforcing payment of support through voluntary compliance. The second section presents those administrative and judicial remedies that force payment when the parent does not comply voluntarily.

INITIAL ENFORCEMENT TECHNIQUES

Initial enforcement techniques generally are used before cases are referred for enforcement through court procedures. These methods are more efficient and less expensive than any approach requiring coordination with attorneys and court personnel. Furthermore, the documentation of initial enforcement efforts and their outcomes provides a sound basis for secondary or court enforcement and increases the likelihood that such efforts will be successful. Courts often grant more stringent remedies when the child support enforcement agency can demonstrate that it has attempted, without success, to get the absent parent to meet the support requirement voluntarily.

Many enforcement techniques are available; the choice of which to use must be determined by assessing the individual case. Factors such as past payment history; age of the support obligation; date of last payment; amount of arrearages; and the absent parent's location, income, and resources must be assessed to select the most appropriate technique. The following methods are commonly and successfully used to collect past-due child support payments.

Telephone Collection Calls

Telephone collection calls, frequently referred to as "Phone Power," are widely used when absent parents fail to make their scheduled support payments. Procedures that have been used successfully by commercial telephone collection agencies adapt readily to the needs of the child support enforcement agency. Telephone calls often are used before any other enforcement attempt because they are inexpensive, require no unusual equipment, take little time, and require no support from anyone outside the agency.

To make telephone collection calls successful, the worker must prepare systematically for each call. This precall planning requires time. However, it decreases the amount of time spent on the telephone, increases the likelihood that the call will generate the desired results from the absent parent, and thus reduces the need for unnecessary follow-up calls. Precall planning should determine:

- The accurate status of payments on the account
- A complete record of past collection efforts and the results of those efforts
- A past payment record that indicates patterns of compliance and/or delinquency
- Basic identifying information to ensure that the individual on the telephone is the absent parent in question
- What the support obligation is and how payments are supposed to be made.

In addition, certain steps should be followed to create a cooperative mood and prevent the call from becoming adversarial:

- The worker should identify himself or herself as a child support enforcement employee of the IV-D agency.
- The worker should explain the purpose of the call by stating the financial obligation that is owed, the date and amount of the last payment, and the method used to determine the amount of past-due support.
- After the first two statements, the worker should pause until the absent parent responds. This "strategic pause" frequently results in information that may be valuable in resolving the case.
- If sufficient information is not volunteered, then the worker can pursue the matter of the delinquent payment(s) and solicit the reason for the delinquency and the absent parent's plan for bringing the payments to current status.
- Finally, the worker should reinforce the plan for bringing payments current, and, if there has been a pattern of nonpayment, explain the possible repercussions of noncompliance.

Child support enforcement workers making collection calls always should consider the rights of the absent parent. Workers are advised against making calls at inappropriate hours, contacting absent parents unnecessarily at their place of employment, calling with undue frequency, making comments that could be perceived as threatening, or misrepresenting themselves or the purpose of the call.

Mail Contacts

When telephone contacts are unsuccessful, the delinquent absent parent is contacted by mail. This contact may take the form of a traditional collection letter, indicating the payment status, amount of payment(s) due, a demand date by which a payment should be received or contact made with the child support enforcement agency, and the possible next step if payment is not made accordingly. Most agencies have programmed such collection letters in their computers and word processing systems and can generate them quickly and inexpensively. The formality of a letter on official letterhead has a significant impact on many people and may generate the response that the more informal telephone call failed to generate.

Another use of the mail for enforcement purposes involves mailgrams. This electronically generated mail service is effective because the official format has a strong impact. Messages can be generated by submitting written copy to be used for the mailgram or they can be transmitted by magnetic tape, punch cards, or word processors. The agency can require a returned receipt of delivery, thereby making the mailgram an effective location tool as well.

Personal Interviews

Interviews are vital to the entire child support process but especially in the area of enforcement. If attempts to solicit payments via telephone calls or correspondence are unsuccessful, the absent parent may be asked to appear in the child support enforcement agency for a collection interview. The interview allows the absent parent and agency worker to meet and discuss problems concerning the timely payment of support. Although time consuming, interviewing does provide an opportunity to gather information from the absent parent and to update the case record.

For interviews to be successful, they too should be well planned. The caseworker should be thoroughly familiar with the particulars of a case. Although there are several approaches to conducting interviews, all require the worker to be in control of the process, even though that control may be very subtle. Depending on the case, the absent parent, and the skills of the interviewer, an approach should be selected that will impress on the absent parent the seriousness of the matter. Even if the interview does not result in total compliance, the information gathered can be used if more stringent judicial enforcement becomes necessary.

Voluntary Wage Assignments

If an absent parent has developed an irregular payment pattern but has sufficient resources to meet the support obligation, a voluntary wage assignment may be used to ensure compliance with the order. The absent parent may volunteer to have a portion of his or her wages (generally the support amount and a portion of the delinquency) automatically withheld by his or her employer and submitted as payment on the support obligation. The absent parent completes a form that authorizes the employer to withhold a set amount and to forward that amount for payment on the child support order. The employer then signs this agreement as an acceptance of the wage assignment.

SECONDARY ENFORCEMENT TECHNIQUES

When an absent parent does not fulfill a support obligation and initial enforcement techniques are not successful, stronger measures must be taken. These measures may be initiated by judicial or administrative procedures.

These enforcement remedies are different from collection efforts described in the first part of this chapter in that their application and effectiveness depend on factors outside the agency's control. In addition to factors in the case itself, the selection of an enforcement remedy must be determined by considering issues such as enabling legislation, crowded court dockets, availability of legal assistance, attitudes of judges and court personnel, and the cooperation of local law enforcement officials.

Secondary enforcement techniques include income withholding, judgments, liens, levy and execution, garnishment, civil and criminal contempt, criminal nonsupport, tax refund interceptions, reports to consumer reporting agencies, full collection by the Internal Revenue Service, mandatory military allotments, and statutory examination of a judgment debtor.

Income Withholding

Income withholding is a superior enforcement mechanism because it is continuous and allows for collection of arrearages as well as current support. In 1984, Congress recognized the efficacy of income withholding by enacting 42 USC 666(a)(1) and (b), which require States to use mandatory income withholding in most IV-D cases where the obligor is in arrears and his or her employer has been identified. The new Federal statute is very specific to assure that State legislatures enact income withholding provisions that are effective and efficient and that fully protect the rights of all affected parties. The requirements are based on the collective experience of the States that have enacted and implemented large-scale income withholding provisions.

The 1984 Amendments require that, after October 1, 1985, income withholding be the preferred enforcement remedy. All child support orders must include a provision for withholding from wages to assure that withholding is available if arrearages occur; in these cases it is not necessary to file an application with the State child support enforcement agency. [42 USC 666(a)(8).] This provision was intended to permit someone other than the IV-D agency to initiate wage withholding (e.g., a private attorney or a custodial parent) and to make effecting the withholding easier in new IV-D cases for which an order already exists.

Most existing statutes that contain such a requirement call for a conditional withholding provision to be included in the support order itself. Such a provision fulfills a dual function. First, it encourages the obligor to comply with the support order voluntarily. Second, it informs the obligor of the consequences of noncompliance in advance, thus lessening the degree of notice to which he or she may be constitutionally guaranteed at the time the withholding is initiated.

The 1984 Amendments allow the State some flexibility in determining what the "triggering event" will be, but State law must provide for withholding no later than the date on which the payments that the absent parent failed to make are at least equal to the support payable for one month. The absent parent may request that the withholding begin earlier.

The Act requires that the withholding not require any amendment to the support order or any further action by the court or agency that issued the order. This provision apparently was intended to remove all discretion from the court or agency administering the withholding procedure as to whether withholding should occur in a case and to prevent State law from requiring a hearing in all cases.

The Federal statute allows State due-process requirements to dictate the extent of the notice to be provided to the obligor after the triggering event occurs; the statute requires that notice be given on the triggering date. As a general rule, the absent parent will be entitled to advance notice of the alleged delinquency and the withholding procedure. The notice, where required, must inform the absent parent:

- Of the amount of overdue support owed
- Of the amount that will be withheld
- That the withholding applies to any current or subsequent period of employment
- Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact
- Of the period within which the absent parent must contact the State to contest the withholding and that failure to contact the State within this time limit will result in the State notifying the employer to begin withholding
- Of the actions the State will take if the absent parent contests the withholding, including the procedure to resolve such contests.[1]

Within 45 days of the date the advance notice is issued, the State must provide an absent parent who contests a wage withholding an opportunity to present his or her case to the State, determine if the withholding is valid, and notify the employer of the outcome, where appropriate. [45 CFR 303.100(c); Social Security Act Sec. 466(b)(4)(A); of the outcome 42 USC 666(b)(4)(A).] Whether a State uses a court system or an administrative process, the only bases for a hearing are mistakes of fact, these being the amount owed or the identity of the absent parent. The Act does not require a formal hearing. Indeed, given the limited scope of the hearing, many States may opt for a less formal hearing.

If the results of the hearing allow the withholding to occur, the administering agency must notify the obligor of the decision and serve a withholding notice on the employer. The employer must be required to withhold as much of the parent's wages as is necessary to comply with the order and provide for the payment of any fee to the employer, up to the maximum amount permitted by the Federal Consumer Credit Protection Act (FCCPA). [42 USC 666(b)(1).] Amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted by the Act. However, the State need not withhold the maximum amount to satisfy arrearages.

The FCCPA determines the maximum part of an individual's total disposable earnings that are subject to "garnishment" to enforce an order for the support of any person. These limits are 50 percent of disposable earnings for an absent parent who is the head of a household and 60 percent for an absent parent who is not supporting a second family. These percentages increase an additional 5 percent, to 55 and 65 percent, respectively, where the arrearages represent support that fell due more than 12 weeks prior to the current pay period. [15 USC 1673(b).]

On receiving the notice, the employer must begin withholding the appropriate amount of the obligor's wages "no later than the first pay period that occurs after 14 days following the date the notice was mailed."[2] The Act closely regulates the language in State statutes on the other rights and liabilities of the employer. For instance, the employer must be subject to fine for discharging any absent parent from employment or taking other forms of retaliation because of a withholding. In addition, the employer must be held liable for amounts not withheld as directed.

States must make it easy for employers to comply with their responsibilities under the Act. The employer can retain a fee to offset some of the cost of the withholding. Furthermore, the employer can combine all support payments it is required to withhold into a single payment, to be forwarded to the agency or court with a list denoting the cases to which the payment applies. The employer need not vary from its normal pay and disbursement cycles to comply with withholding orders, but it must forward the support payment to the State or other designated recipient within 10 days of the date the obligor is paid.

When the obligor changes jobs, the employer on whom a wage withholding has been served must notify the court or agency that entered the withholding order and provide specified information, and the State must notify the new employer to continue withholding from the obligor's wages. Similarly, States must develop procedures to terminate wage withholding orders. Appropriate circumstances for termination may be when all of the children have become emancipated and no arrearage exists or when it is impossible to forward amounts withheld because the custodial parent whereabouts are unknown. In no case should payment of overdue support be the sole basis for termination of withholding.

Other provisions require that the wage withholding be given priority over other legal processes brought under State law against the wages of the same obligor and that the procedure be applied in interstate cases. The 1984 Amendments require that a State treat another State's support order and wage withholding request as if it were its own. In addition, States can implement statutes that expand the definition of wages to include forms of income other than those normally included in the definition.

Expanded use of income withholding procedures should change the principal method of enforcing child support obligations in many States. Moreover, the streamlined process and the replacement of court hearings with administrative hearings in many States will reduce the role of the courts in enforcement proceedings in cases where the obligor is employed and the employer is known.

Judgments

In most States, child support orders are enforceable by the same means as regular court judgments; the judgment is the established child support debt. In most States a judgment arises on the date a support payment is due and not made. The judgment automatically increases as subsequent payments are missed. Because any remedy that might be used to enforce the order would be by definition a postjudgment remedy, the obligor may not be entitled to notice or a predeprivation hearing.

In other States, the order is not entitled to judgment status. In these States, it is necessary to "reduce the arrearages to judgment" before depriving the obligor of property through an enforcement remedy. The judgment can be established through a special proceeding filed under the original case number in the same court that entered the support order. In some States, the judgment must be sought in a court different from the one that entered the order if the initial court is of inferior jurisdiction and thus lacks authority to enter money judgments. In these States, it may be necessary to invoke a formal transfer proceeding, in addition to the enforcement proceeding to get the case before the appropriate court.

The most common procedure in States where arrearages must be reduced to judgment combines the request for judgment with a contempt proceeding. In States where the arrearage obtains the status of a judgment automatically, the total arrearage can be substantiated simply by referring to the court's payment record or by presenting to the court clerk an affidavit executed by the obligee. Once the amount of the arrearage is determined, the amount of the judgment can be noted on the record or the judgment may be issued.

Clearly, States that have conferred automatic judgment status on their child support orders are one step ahead of States in which arrearages must be reduced to judgment. At least two States, Oregon and Nebraska, have done so by statute.[1]

Liens Against Real and Personal Property

The Child Support Enforcement Amendments of 1984 require States to implement procedures to impose liens against real and personal property for amounts of overdue support. In contrast to the wage withholding requirement, the Federal statute neither defines lien nor provides any guidance as to when a lien must be created. Instead it directs State child support enforcement agencies to establish guidelines for determining whether or not to establish a lien on a given case.

A lien allows the obligor to retain possession of the piece of property but prevents transfer of the piece of property unless the lien is satisfied. A lien statute prevents transfer of affected property either directly (by prohibiting the recording agency from issuing a new title or deed) or indirectly (by providing that all subsequent interests in the property will be subject to the lien). The latter method is the most common. It works because subsequent potential purchasers and lenders receive notice of the existence of the lien during the process of transferring the title or deed. The potential purchaser or lender reacts to this "cloud on the title" by requiring the obligor to satisfy the lien, or obtain a release from the obligee, before agreeing to go forward with the transfer or loan. In real property transfers, the potential purchaser or lender discovers the lien through the title search conducted by the title insurance company. Personal property liens require notice to subsequent purchasers and lenders as well, but the notice usually is provided by way of a note on the title of the property or by serving notice on a third-party possessor.

Typically, the lien will attach to all of the obligor's real property situated in the county where the support judgment was entered, recorded, or both. In some States (e.g., New Jersey), judgments are centrally recorded and create statewide liens on real property. As such, the lien document does not have to refer to specific property to prevent a sale or other transfer. In most States, the lien also will attach to property attained by the obligor after the lien has arisen.

The lien will last for a number of years, depending on the statute, and generally may be revived as long as the underlying judgment survives. The lien may grow automatically, as the arrearage increases, and even may take priority over liens created by other creditors if the statute so provides.

Lien procedure. Procedures for establishing liens vary among States. In a few States, the lien arises automatically when a support order is entered and noncompliance by the obligor first occurs. Most States require the obligee to take some affirmative act to create the lien. This act may be as simple as recording a transcript of the support order or judgment in an appropriate office of public records (typically the recorder of deeds for real property and the title agency for personal property) or as complicated as filing an independent action to reduce the arrearage to judgment, obtaining a specific order from the court establishing the lien on an identified piece of property, and directing the appropriate public official to note the existence of the lien on the title or deed.

The most effective procedure adopts a middle ground. The obligee files a certified copy of the support order and perhaps attaches an affidavit detailing the amount claimed to be due and owing as of the date of recording. This latter requirement may not be necessary where the support order is payable to the court or other public registry such that the amount of the lien at any point in time can be determined by reference to public records. In addition to these two documents, it is customary to include a cover document requesting the court clerk, recorder of deeds, or title agency to file the documents and carry out any steps required by the statute to establish the lien.

Once the lien is created, the obligee takes no further steps until immediately before the lien expires. At that point, if the case warrants further effort, the child support enforcement agency will revive the lien. Failure to revive the lien may allow the obligor to dispose of property without having to apply the sale proceeds to his or her arrearage and may cost the child support obligee a priority over other lienholders.

Satisfaction and release. Most lien statutes contain provisions allowing a voluntary lien to be released by the obligee and establishing a procedure where the obligor can petition the court for this release if the obligee refuses to execute a voluntary release. Such a release can be general or limited to specific property. To obtain a court order releasing the lien, the obligor generally must post a bond, provide other security, or satisfy the court that releasing the lien will not leave the obligee in an insecure position.

Most liens either will expire of old age or be released voluntarily by the obligee. The obligor generally requests a voluntary release when he or she attempts to sell the property or borrow money using it as collateral, and the existence of the lien becomes known to the purchaser or lender. At this point, the lien becomes a powerful collection remedy. If the obligor wants to sell the property or obtain a loan, he or she must obtain a voluntary release of lien for the specific piece of property involved. (There generally will be insufficient time and grounds to petition the court for an involuntary release.) Clearly, the obligee has a great deal of leverage in such a situation, but the obligee should not prevent the transfer altogether. The sale or loan is likely to produce a pool of funds out of which a substantial payment on the support arrearage can be made. If the transfer is a sale, it is likely that the obligor has some equity in the property after prior lienholders (i.e., mortgagees) are paid off--otherwise the sale price would not be acceptable to the obligor. If the transfer is a loan or second mortgage, sometimes a portion of the loan proceeds can be applied to the child support obligation, or other arrangements can be made that are acceptable to the obligee.

Where the obligee is the custodial parent (non-AFDC cases), the child support enforcement agency will need to confer with the custodial parent to determine whether or not to release the lien based on the best terms available. Where the obligee is the State (AFDC cases), the agency will apply its own policy in responding to the absent parent's lien release request. Either way, the agency will probably not insist on recovering the entire arrearage in return for a voluntary release. The collection will occur only if the transfer occurs. Often, the agency will negotiate for the best immediate payment it can obtain, and attempt to secure payment of additional amounts by way of some other guarantee as a part of the release agreement.

Once the agreement is reached, there is usually a third party involved in the transfer (e.g., a real estate agent) who is willing to act as escrow agent to facilitate the exchange of the lien release for the payment. This allows the purchaser to pay off the lien, thereby diminishing any insecurities the purchaser might have regarding the validity of the title, instead of paying the obligor and trusting him or her to satisfy the lien.

Levy and Execution

"Levy and execution" refers to the procedure that allows a judgment creditor to obtain a court order directing the sheriff (or other similar official) to seize property in the possession of the obligor, sell the property at a sheriff's sale, and apply the proceeds, less the costs of the sale, in satisfaction of the judgment debt. The exact procedure will vary slightly from State to State.

Generally, the levy and execution process begins with a writ of execution (or attachment) from the clerk of the court that rendered the order. In some States, the writ is issued by the court in the county where the property to be seized is located, regardless of the identity of the rendering court. In such a State, the support order or judgment first would have to be transferred (or registered) in the county where the property sits. The writ is directed to the sheriff of the appropriate county, or perhaps to any sheriff in the State, and orders the sheriff to levy on the property described in the writ and, after appraisal and a specified form of public notice, to sell the property at a sheriff's sale. The writ is usually issued by the court clerk and as such does not allow for notice and a hearing; nor does the clerk have discretion to refuse the writ request if all procedural steps required by the statute have been completed.

In States that require the support obligee to reduce arrearages to judgment prior to seeking execution, the judgment must provide specifically for execution before the writ can issue. In such States, the court may have some discretion regarding the language contained in the judgment. In these States, judgments should always provide for execution.

The writ typically has a limited life span of less than a year. The expiration date specified on the writ is referred to as the "return date." The sheriff must seize the property, appraise it, schedule the sale and issue public notice, hold the sale, and turn over the proceeds less costs before this return date.

Seizing the property. The procedure the sheriff follows will depend on whether the property to be seized is real or personal property. Real property is easier to levy against. The legal description and street address will give the sheriff sufficient information to identify and seize the property. The seizure is achieved by placing a notice on the property, notifying anyone on the property at the time of the levy, and placing a notice in the office of the recorder of deeds.

For personal property, the procedure is more difficult for at least two reasons. First, the property is often movable and thus difficult to locate. Second, the property may not be particularly unique in the community. As a result, the execution request should include very specific and complete information. The court clerk will transfer this information to the writ, enabling the sheriff to locate the piece of property. If the property can be seized physically and taken away, the sheriff will do so. If not, the seizure will be accomplished by some other act that effectively removes the item from the obligor's possession and notifies third parties that the property has been seized. This may be achieved by placing a sheriff's seal on the item in a manner that makes it incapable of being removed. If the item is seized physically, it will be transported to a storage facility maintained or arranged for by the sheriff.

Exemptions. In most States, certain types of property are exempt from execution. The exemptions are established by statute and generally protect tools of the obligor's trade, books, family heirlooms, and the like. Many States also allow the obligor a homestead and automobile exemption in limited amounts. By statute, court rule, case law, or practice, the sheriff often is responsible for notifying the debtor of State exemption laws. Many States have enacted statutes providing that the normal exemptions do not apply to protect delinquent support obligors. The theory behind this exception is that the exemptions were designed to protect the absent parent's ability to provide for his or her family and should not be applied to frustrate his or her attempt to force payment of child support.

Notice and sale. Notice and sale procedures depend on whether the property to be sold is real or personal property. Once the sheriff has seized the property and appraised its value to determine whether additional property should be seized to satisfy the judgment, the sheriff must schedule the sale and provide the public notice required by statute. The notice may have to be accomplished by posting advertisements in a newspaper, posting notices in the courthouse, or another similar method.

The statute also may prescribe the number of days in advance of the sale that the notice must appear and the place and timing of the sale. For instance, some statutes provide that a real estate sheriff's sale must take place at a real estate exchange between the hours of 9:00 a.m. and 5:00 p.m. Personal property is often sold on the steps of the courthouse.

Costs incurred in storage and sale, along with execution and sheriff's fees, if applicable, are subtracted from the sale price, and the sheriff distributes the remainder to the child support enforcement agency together with a sheriff's deed to the property.

Garnishment

Garnishment is a statutory procedure for seizing an absent parent's property that is in the possession of a third person and applying the property to the child support debt. Garnishment has been a very effective child support enforcement remedy in some States and has been used to seize wages, bank accounts, worker's compensation benefits, pension benefits, and unemployment compensation benefits. It is generally a remedy with a limited time scope, usually days or months. Garnishment cannot be used in most States to collect current or future support; the amount of the garnishment is limited to the amount of arrears due on the date the writ issues.

The future use of garnishments to reach wages will decrease markedly due to the withholding provision in the Child Support Enforcement Amendments of 1984. Nevertheless, child support enforcement agencies will continue to use this remedy to obtain other types of property.

Procedure. The first step in the garnishment process is to compute the amount of outstanding arrearages, including interest, if permitted by statute. The custodial parent normally prepares an affidavit to document the payments he or she has received from the obligor, especially during any periods when the order was not payable through the court or other official registry. A representative of the IV-D agency often prepares a second affidavit if payments were to have been made directly to the agency for any of the applicable period.

Next, a writ of execution or garnishment must be issued by the court that entered the order. The writ should direct the sheriff in the county in which the garnishee is located to serve the writ. If the absent parent is a Federal employee or in the military, the writ may be served by certified mail. [5 CFR 581.] The execution request form and the writ itself generally contain blanks for identifying the source of the judgment, alleging the arrearage, and identifying the garnishee. The sheriff also will serve a notice on the garnishee, informing him or her of the effect of the garnishment and of the applicable exemptions for child support garnishments.

The final document to be served on the garnishee is the interrogatory form. Normally, there are only four or five interrogatories and these are designed to be easy for the garnishee to complete and file with the court within the time limit set by statute. The interrogatories require the garnishee to disclose any property acquired during the garnishment. The garnishee also may set up any defenses to the garnishment that the garnishee, or the obligor, may have.

On the return date, the garnishee delivers the interrogatory answers to the sheriff or, more often, mails them to the court and the attorney for the obligee. The court clerk then may issue a pay-in order, directing the garnishee to pay the garnishment proceeds over to the sheriff. Often the garnishee will pay the proceeds to the sheriff or court together with the interrogatory answers. Occasionally the garnishee fails to answer the interrogatories or fails to withhold and deliver the property; sometimes the obligee's attorney will suspect that the interrogatory answers are untrue. The garnishment statute usually will provide for a subsequent proceeding allowing the obligee to seek judgment against the garnishee for the value of the property that should have been withheld and paid over to the sheriff. In some States, the obligation to answer the interrogatories may be enforced by way of contempt proceedings.

Payment by the garnishee to the sheriff constitutes satisfaction of the debt owed by the garnishee to the obligor. Thus, the garnishee is protected from double liability.

Garnishing bank accounts. Bank accounts can be very good sources of collections. Three issues regarding the garnishment of bank accounts can cause problems, however: (1) discovering the existence and identification of the account; (2) discovering which branch of a bank may accept service of process to affect the account; and (3) if the absent parent has remarried, or has a joint account with another individual such as a business partner, determining if the account is subject to garnishment for enforcement of the absent parent's obligation.

Finding a bank account can be difficult because the account must be discovered without alerting the absent parent that the search is taking place. However, OCSE has developed a system for locating absent parents using tax form 1099, which banks use to report interest earned on bank accounts. Although the information gathered with this system is intended primarily for parent location and must be verified, pursuant to 26 USC 6103, before it can be used for any purpose, the method has proved to be very successful. In addition, State IV-D agencies have developed methods of discovering their existence. Often the custodial parent (or the children, if visitation is occurring) will know where the absent parent banks. Landlords, mortgagees, and credit reporting agencies can be sources of information as well. Some jurisdictions accept personal checks for child support payments, keeping a record of the account number and location.

Unfortunately, discovering the existence of the account is not the IV-D agency's last problem. With the increase in branch banking, it is not unusual for a bank to have branches in many different locations. A general rule is emerging, however, which holds that each branch of a bank is in no way concerned with accounts maintained by depositors in other branches or at the home office. Accordingly, accounts may be garnished only by serving the writ at the bank location that is holding the funds for the depositor. With the advent of automatic teller machines, many depositors now may withdraw their funds on deposit at all branches of the bank. This development may produce a change in the general rule.

Once the garnishment has been issued and served, the most troublesome problem concerns interests held in the account by third parties. Generally, creditors can garnish a joint bank account to enforce judgment debts owed by one of the depositors. Where this is the rule, courts are split as to whether the entire account is subject to garnishment or whether only the judgment debtor's interest in the account is reachable. In States that recognize the concept of tenancy by the entireties, many courts have concluded that when a debtor opens an account with his spouse (in child support situations, the second wife), the entire account is protected from garnishment.

Garnishment against Federal employees. Money due from the United States as compensation for employment to any individual, including members of the armed services, are subject to garnishment in the same way and to the same extent as if the United States were a private person. [42 USC 659.] This waiver of sovereign immunity is limited to garnishments to enforce child support or alimony payments. This remedy is available whether or not the children are receiving AFDC benefits.

The waiver of sovereign immunity does not allow Federal courts to issue writs of garnishment on the Federal Government. Nor does the Federal statute create a garnishment remedy in States that do not have such a procedure. The writ of garnishment must issue according to existing State procedure and must come from the State court that rendered the order to be enforced.

Service of the writ is accomplished through certified or registered mail, return receipt requested, or by personal service, on the agent designated for receipt of such service. Such process must be accompanied by sufficient data to permit prompt identification of the individual and the monies involved. Only money (including military retirement pay) to be paid to the obligor as compensation for employment are subject to garnishment. Veterans' disability benefits being paid to a veteran who waived all rights to military retirement pay are not garnishable.

Garnishing workers' compensation benefits. Worker's compensation statutes mandate that a form of insurance be provided to each worker involved in a covered activity to compensate the worker for the financial cost of injuries sustained on the job. To this end, virtually all workers' compensation statutes exempt personal injury awards from seizure by a worker's creditors. However, the courts have been willing to provide that child support, alimony, and governmental claims are the only exemption permitted.

Once the exemption problem is overcome, the IV-D agency must determine who to serve with the garnishment and when to serve it. Generally, the worker's compensation insurance will be underwritten by an out-of-State insurance company, the identity of which can be obtained through the worker's employer. Insurance companies generally may be served through their registered agent or by serving a State official, such as the director of the insurance regulatory agency. In some situations, it also may be possible to serve the worker's attorney with a garnishment.

Garnishing pension benefits. Most pensions include a provision attempting to make them immune from the claims of the pensioner's creditors. Nevertheless, many State courts have held that such exemptions do not apply to child support, at least where the absent parent has a vested right to the benefits. These decisions have been based on the following reasons:

- The purpose of the exemption was to preserve the benefits for the pensioner's dependents as well as for the pensioner.
- The exemption laws did not apply to support actions.
- The legislature did not intend to create a safe haven from the claims of a custodial parent for child support.

Civil Contempt

A court has inherent authority to punish individuals for violating its valid judgments or decrees. Any act or omission that embarrasses the court, lessens its authority or dignity, or obstructs the administration of justice constitutes contempt. Contempt is classified as either "civil" or "criminal." No clear line distinguishes civil from criminal contempt. However, civil contempt differs from criminal contempt in both purpose and procedure. If the purpose and character of the penalty imposed by the court is remedial and for the benefit of a private party, the contempt is classified as civil. However, if the purpose of the penalty is to vindicate the authority of the court, the contempt is classified as criminal. This section discusses civil contempt in the child support enforcement context; the following section addresses criminal contempt.

Procedure. In most jurisdictions, the contempt process is initiated by filing a motion to the court to order the absent parent to "show cause" why he or she should not be held responsible for a child support debt. In virtually all jurisdictions, the judge grants the motion and issues the Order to Show Cause without even an informal hearing. Most courts require the motion to be supported by a copy of the payment record. After the judge reviews and signs the Order to Show Cause, it is processed by the court clerk's office. The clerk checks the court calendar for an available date, prepares a summons to accompany the Order, and forwards the two documents to the sheriff's (or other process server's) office.

The absent parent generally must have actual notice of the date and time of the hearing. If it can be established that the obligor is avoiding service of process, it is sometimes possible to serve the obligor's attorney or to serve an adult at the obligor's residence. To direct such service, the IV-D agency may need to file an accompanying motion before the summons is issued asking the court for permission. If the absent parent appears at the hearing in response to the summons, that issue will not have to be addressed. If he or she does not show up, it may be possible to justify the substituted service to the court as a step in obtaining a bench warrant.

Five elements must be established to support a finding of contempt in a civil proceeding:

- Continuing personal and subject matter jurisdiction in the court that is holding the show cause hearing
- Ability of the obligor to comply
- Willful noncompliance by the obligor.

- Existence of a valid and exact support order by asking the court to take judicial notice of the support order contained in the court file

- Knowledge of the order by the obligor. The obligor's knowledge of the order usually can be established by reference to the support order itself, which often notes the presence of the obligor or his or her attorney at the hearing that produced the order. If the order does not contain such a reference, the court file should contain the court clerk's certificate of mailing, which creates a rebuttable presumption of service.

To establish the inability to pay, the obligor must show not only that he lacks the financial resources to pay the delinquency but also that he knows of no other source from which the sum might be obtained. When the obligor presents evidence that his or her noncompliance was financially justified, some States require the custodial parent to present evidence to the contrary.

Punishment. Punishment in civil contempt proceedings tends to fall into three categories: incarceration, coercive fines, and compensatory fines. Although all three are appropriate child support enforcement orders, most courts rely on incarceration alone. Generally, the fine or imprisonment continues until the obligor complies with the court's purgation requirements. Because this type of punishment could be a life sentence, many courts routinely place a maximum on the punishment by "sentencing" the obligor to a fixed term that the obligor can end at any time by making the required payment. The requirements for paying the child support debt must be set forth in the judgment and commitment order in clear language so that the obligor knows precisely what he or she must do to avoid the punishment. Otherwise, the judgment and commitment are void and the obligor can be released.

If the obligor is able to borrow from friends and relatives or sell or mortgage property to make an arrearage or current support payment and has refused to do so, the court may require him or her to make that effort. The court even may require the obligor to make a direct transfer of personal property. If the obligor is unemployed, the court may include a "seek work" order in the payment requirement and require the obligor to report periodically to the court his or her efforts to find employment. Many States can require the obligor to spend nights and weekends in jail but be released each day to go to work.

Many courts will allow the obligor a short time period to satisfy the support debt before they invoke the commitment order. Many judges like to use this technique because they recognize that it is the threat of jailing more than the jailing itself that provides the incentive to pay. By allowing the obligor a period of time to comply with the payment order, the end can be attained without the need for the obligor to serve time. The obligor does not risk losing his job; the county does not have to incur the cost of housing a prisoner, and the obligor's task in raising the money is logistically easier.

Civil contempt is most effective when the obligor can be brought before the judge immediately after a payment is missed. If caseload pressures keep noncomplying obligors out of court or if the judge is unwilling to incarcerate obligors who are able to pay but do not, then contempt proceedings can actually be counterproductive. The same is true for cases where the obligor is destitute and an appropriate equitable remedy does not present itself.

Criminal Contempt

A few States use criminal contempt to enforce child support obligations. A criminal contempt proceeding is considerably more complicated than a civil contempt proceeding. However, there are occasions when criminal contempt is useful. Where an absent parent has been charged with civil contempt on numerous occasions but regularly frustrates the action by paying the arrearage on the day of the show-cause hearing, a criminal contempt action may change his or her attitude about compliance. Furthermore, criminal contempt may be the only available remedy to punish an obligor who has made himself or herself unable to pay by quitting a job or taking one at a much lower salary.

Criminal Nonsupport

Most States have passed statutes making the failure to support one's children a criminal offense. Criminal nonsupport charges are appropriate when civil remedies are not sufficient.

Child support enforcement recently has turned away from criminal remedies, as IV-D administrators began to use civil remedies such as wage withholding and tax refund interceptions to produce higher overall collections. Nevertheless, felony nonsupport proceedings are still useful when an obligor has fled the jurisdiction or is avoiding service of civil process; filing criminal charges allows an arrest warrant to be issued. The obligor is then likely to be picked up in the future, because felony warrants show up on police computers across the country. If stopped for a minor traffic violation, the obligor will be arrested on the felony nonsupport warrant. Similarly, where the obligor is avoiding all civil remedies and it would be useful to change his or her attitude about the importance of voluntary compliance, a criminal nonsupport charge can be very effective.

Procedure. In most States, all of the normal rules of criminal procedure apply to felony nonsupport actions. The action is initiated by filing a criminal complaint or indictment, depending on local practice. This document is presented to the judge, who issues a summons or warrant. The initial pleading must give all elements of the crime in a way that allows the defendant to understand the charge and prepare a defense.

After accepting the complaint, the court usually issues a summons to the absent parent, asking him or her to come to court for the hearing. Occasionally, the court will issue a warrant for the parent's arrest, especially if he or she has been uncooperative. At this hearing, the court will read the charge to the defendant, advise the defendant of his or her rights, determine whether the defendant requests and qualifies for appointed counsel, set a date for the preliminary hearing, and, occasionally, set bail. At the preliminary hearing, the defendant will be asked to enter a plea. If the charge is a misdemeanor, the arraignment and preliminary hearings often are combined into one proceeding.

The evidence in a criminal nonsupport action should not differ markedly from that in a civil contempt case, unless the defendant asserts nonpaternity as a defense. In most cases, the most important issues will be the defendant's state of mind (i.e., whether he or she willfully or recklessly neglected the child support obligation), his or her financial condition during the relevant period, and the needs of the children.

Many courts have held that a culpable mental state can be inferred once the prosecution establishes neglect. In California, once the prosecution shows the omission to provide support, the burden of proof shifts to the defendant to prove that the omission was not willful or excusable.

Ability to pay may be more difficult to prove in a criminal case than in a civil case because the defendant cannot be forced to testify (except in those States where inability to pay is an affirmative defense). Presumably, the prosecutor could submit records of the defendant's employer or of the State revenue or employment security agency. If that fails, perhaps friends or relatives of the defendant could be called to testify regarding the spending habits of the defendant during the relevant period.

The needy condition of the children can be proved with the testimony of the custodial parent or, for an AFDC case, by placing the welfare agency's AFDC grant history into evidence.

Punishment. Once the defendant is convicted, the court must fashion a form of punishment that is severe enough to make the defendant change his or her behavior in the future and yet does not make it impossible for the defendant to earn a living. The court usually can achieve these ends by sentencing the defendant to an appropriate jail term and then placing the defendant on probation. The conditions of probation normally require the defendant to pay a certain amount of child support and perhaps take other action to make it less likely that he or she will not repeat the offense (e.g., enter a drug or alcohol rehabilitation program). Many appellate courts have upheld a trial court's authority to enter a permanent support order as a condition of probation as well. However, in some States, the trial court may only enforce a current support order for the maximum period a defendant can be placed on probation, which will vary with the length of the sentence imposed.

Federal Tax Refund Interceptions

One of the most effective collection remedies in recent years has been the interception of Federal income tax refunds owed to delinquent absent parents. In tax year 1985 (tax processing year 1986), 1,505,732 cases were submitted to the Internal Revenue Service (IRS), which certified 1,418,580 of these. Through July 1986, 572,855 refunds had been intercepted, totalling amost $302 million in gross collections. Complete figures for tax year 1984 can be found in Child Support Enforcement: 10th Annual Report to Congress for the Period Ending September 30, 1985, to be published by DHHS in 1986.

A new remedy has been created by which an absent parent's Federal income tax refund can be reduced by the amount of any arrearage that has been assigned to a State and certified to the IRS for setoff. The Child Support Enforcement Amendments of 1984 extend use of the remedy to collection of past-due support in non-AFDC and foster care cases. This revision is effective as to refunds payable after December 31, 1985, and before January 1, 1991. [42 USC 654(18), 42 USC 664, and 26 USC 6402(c).] The 1984 Amendments also require States to implement State tax refund offset processes to collect overdue support.

The Federal tax refund offset procedure involves separate qualifying criteria for AFDC and non-AFDC cases. Foster care cases are treated in the same way as AFDC cases. For AFDC cases, the amount of past due support must be at least $150 and must represent a delinquency of at least 3 months. For non-AFDC cases, the support delinquency must be owed to or on behalf of a minor child and be entirely child support (i.e., no spousal support component) and must be at least $500. The State must check its records to see if there are AFDC or foster care arrearages. In addition, the State may opt to consider for setoff only the delinquency that has accrued since the State began to enforce the support order. For both types of cases, the IV-D agency must possess a copy of the support order and all subsequent modifications, a copy of the payment record or an affidavit signed by the custodial parent attesting to the amount of support owed, and in non-AFDC cases the custodial parent's current address. Also, before submitting the case to OCSE, the IV-D agency must verify the accuracy of the absent parent's name, social security number, and delinquency.

Each State IV-D agency must submit annually to OCSE a magnetic tape identifying cases for potential refund interception. For each case submitted, the State must specify whether it is an AFDC/foster care case or non-AFDC case. OCSE is to review each submittal to determine whether the above criteria have been met. If all is in order, OCSE transmits the submittal to IRS. The IV-D agency must inform OCSE of any decrease or elimination of any amount if the decrease is significant according to State guidelines. If, however, an administrative review has been conducted, any deletions or decreases must be reported to OCSE.

Two notices must be provided to the absent parent. OCSE, or the IV-D agency if it elects to do so, must send a written advance notice to the absent parent, informing him or her of the right to:

- Contest the State's determination that past-due support is owed or the amount of past-due support

- An administrative review by the submitting State or, at the absent parent's request, the State with the order on which the referral for offset is based.

In addition, the notice must inform the absent parent of the procedures and time frame for contacting the IV-D agency to request administrative review and that, in the case of a joint return, the IRS will notify the absent parent's spouse at the time of offset regarding the steps to take to protect the nondebtor spouse's share of a joint refund. A second notice (from the IRS) must be sent at the point the refund is intercepted.

If the absent parent responds to either notice by requesting a review, the IV-D agency must notify both the absent parent and the custodial parent in non-AFDC cases of the time and place of the administrative review. If the review results in a deletion of, or decrease in, the amount referred for setoff, the IV-D agency must notify OCSE within the timeframes established by OCSE. If the offset has already occurred, the IV-D agency must make any necessary refunds promptly.

State Tax Refund Interceptions

States have reported success in intercepting State tax refunds. For instance, in 1981, Oregon collected $3 million. Congress responded in 1984 by enacting 42 USC 666(a)(3), which requires all States to enact and implement procedures under which State tax refunds can be intercepted for both AFDC and non-AFDC cases.

The 1984 Amendments required States to have laws providing for State tax refund offset. Most States that have indeed an income tax have enacted setoff statutes, authorizing the State revenue agency to withhold tax refunds due individuals who owe any liquidated debt to any State agency. The procedure is similar to the Federal setoff procedure, with the State revenue agency performing a role similar to that of the IRS.

Bonds and Other Security

The Child Support Enforcement Amendments of 1984 order States to require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support after the absent parent has been informed of the proposed action and of the procedures to be followed to contest it. The remedy need not be applied in all cases, but the State must determine that a case is not appropriate by using State guidelines that take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations.

A majority of States have enacted legislation authorizing courts to require a noncomplying obligor to post a compliance bond or provide other security. Now that States will be turning to expedited judicial and administrative processes for enforcement of support obligations, the authority to require bonds or other security may be conferred on judge surrogates as well.

The remedy may be combined conveniently with a civil contempt proceeding. Where the obligor is found in contempt, the court might order that he or she post a bond or give over title to real or personal property to secure future compliance. On noncompliance, the security is liquidated at the direction of the court, usually ex parte, and the proceeds are applied to the support obligation. In many States, due process would require that notice and a hearing (pre- or post liquidation) be provided to determine whether the obligor did or did not comply, and allow him or her to assert any available defenses. A thorough statute will set forth a clear procedure.

In the past, the remedy has been more theoretical than actual. Bonding companies have been unwilling to provide what is in essence "child support insurance," perhaps due to the low level of compliance. The passage of Federal legislation is not likely to change this attitude. Therefore, it may be more effective to order an absent parent to provide security only where a specific piece of property has been identified, which is not appropriate for seizure by way of execution. Where the obligor's personal interest in the property is high, financial interest is low, and storage and sale costs are likely to be high, asking the court to order the obligor to put the property up as security would encourage future performance. A good example of such property would be a motorcycle or a boat. The obligor may get enough pleasure out of the item to make it worth more than the amount of support he or she might have to pay to comply with the order.

Reports to Consumer Reporting Agencies

According to the Child Support Enforcement Amendments of 1984, States must provide procedures for making available to any consumer reporting agency information regarding the amount of overdue support owed by an absent parent residing in the State. The procedure must be available in cases where the amount of overdue support exceeds $1000. Consumer reporting agency is defined as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates credit information on consumers for the purpose of furnishing reports to third parties and that uses means or facilities of interstate commerce for preparing or furnishing these reports.

The State must provide the absent parent advance notice and an opportunity to contest the accuracy of the information to be provided to the consumer reporting agency. In carrying out the notice and conflict resolution process and before information is released, the State must comply with its applicable due-process requirements. The State may also charge the consumer reporting agency a fee to cover the costs of providing the information.

"Full Collection" by the IRS

To use this remedy, the State IV-D agency must submit requests for certification to the OCSE Regional Representative. [45 CFR 303.71(d)(1).] A court or administrative order for support must be entered against the individual, reasonable efforts must have been made to collect the amount owed, and the State must have an assignment of support or application of service. The delinquency of the order cannot be less than $750, and certification will not be allowed if full collection services have been requested during the previous 6 months. The State must agree to reimburse the IRS for costs involved in the collection. The fee for the service is $122.50.

The OSCE Regional Representative reviews the request to determine whether the State has made reasonable efforts with other available remedies to collect the amount owed and that all required information is supplied in the request. Next the Regional Representative either forwards the approved request to the Secretary of the Treasury or consults with the State in an attempt to correct any deficiencies. The IRS will attempt to collect the amount much like a tax delinquency.

Mandatory Military Allotments

Section 465 of the Social Security Act requires allotments to be taken from the pay and allowances of any active member of the uniformed services who owes the equivalent of 2 months or more in court-ordered child support or in child and spousal support payments.[4/] The requirement also applies to commissioned officers of the Public Health Service, an agency within the DHHS, and also of the Commissioned Corps of the National Oceanic and Atmospheric Administration, an agency within the Department of Commerce.

The mandatory allotment procedure is initiated by the IV-D agency or by the court or agency that has the authority to issue an order by sending a notice to a designated official within the uniformed service involved. The notice can be given in the form of a court order, letter, or other document. The contents of the notice vary from one branch of the service to another but generally must:

- Provide the full name, Social Security number, branch of service, and duty station if known of the member who owes the support obligation
- Specify the amount of support due and the period in which it has remained owing
- Be accompanied by a certified copy of an order directing the payment of support issued by a court of competent jurisdiction, or in accordance with an administrative procedure which is established by State law, affording substantial due process, and subject to judicial review
- Provide the full name, Social Security number, and mailing address of the person to whom the allotment is to be paid
- Identify any limitation on the duration of the allotment
- Identify the names and birthdates of all children for whom support is to be provided under the allotment.[5/]

The notice and accompanying documents are served by certified or registered mail or by personal service upon an official designated by regulation.

On receipt of the notice, the uniformed service must provide a copy to the absent parent and arrange for a consultation between the absent parent and a judge advocate (or a representative of the service's legal staff). The consultation allows the absent parent and the judge advocate to discern the legal and other factors involved in the member's support obligation and his or her failure to make payments. The allotment may not be instituted until this consultation has been provided, or 30 days after the absent parent received notice of the delinquency.

The allotment is for the amount necessary to comply with the order (which, if the order so provides, may include arrearages and amounts for current support), except that the amount of this allotment, together with any other amounts withheld for support from the wages of the member, may not exceed the limits established by the FCCPA. [15 USC 1673(b).]

Statutory Examination of a Judgment Debtor

One of the most frustrating situations for the IV-D agency is the self-employed absent parent or the absent parent who is paid by cash and, therefore, can continuously avoid contempt by claiming inability to pay. Without evidence on the obligor's income or assets, there is little the agency can do to counter the absent parent's claim of inability to pay.

This problem apparently presents itself to numerous judgment creditors, because many State legislatures have provided all judgment creditors a remedy suited to this very situation. Typically, an execution first must be returned unsatisfied by the sheriff. A motion then must be filed with the court that renders the judgment, requesting an order requiring the defendant to appear at a time and place named in the order to "undergo an examination under oath touching his ability and means to satisfy said judgment."

The court then holds a hearing to examine the defendant. The process, when successful, results in a finding that the defendant owns property that ought to be applied toward satisfaction of the judgment, as well as an award against the defendant for the costs of the examination. If the defendant is found to be actually without property, the costs are charged to the plaintiff.

ENFORCEMENT IN INTERSTATE CASES

The major interstate enforcement procedures and remedies include interstate wage withholding; "straight" URESA proceedings for cases that cannot be resolved by wage withholding; registration of out-of-State orders under URESA and other statutory provisions; actions in Federal court and seizure of in-State wages and bank accounts.

Interstate Wage Withholding

The Child Support Enforcement Amendments of 1984 require each State to establish a system under which support payments will be withheld from the wages or other income of absent parents who are behind in support payments. The Federal statute further requires each State to extend its wage withholding system to include income earned within the State by parents with support obligations in other States. Through this interstate system, child support owed by absent parents can be collected without regard to the residence of the child or the child's custodial parent.

The ABA under contract to OCSE and with the assistance of NCSL has drafted a Model Interstate Wage Withholding Act, which many States will consider in implementing the interstate wage withholding requirement. The Comments to the Model Act refer to these agencies as income withholding agencies of the "requesting" and "forum" State. The former is the State in which the children reside; the latter the State in which the absent parent resides or works. This discussion is adapted from these Comments and uses the same terminology.[b/] The term "agency" will refer most often to the IV-D agency or the courts, depending on which entity administers the procedure.

The Model Act requires the income withholding agency to request interstate withholding on behalf of its current IV-D clients, as well as for in- and out-of-State residents who apply for this service through the IV-D agency. In addition, the agency must initiate income withholding for a person who resides out of State when the underlying support order was issued by the agency's State. This is likely to occur when the custodial parent and child have moved out of State and all the relevant documents, including payment records, are still in possession of the enacting State, or when the custodial parent moved out of State and was receiving payments directly from the obligor without ever using the agency services of a new State. In any event, the custodial parent also could elect to go to the agency where she or he now resides for purposes of initiating an interstate request for income withholding.

The wage withholding procedure requires the requesting agency to compile and transmit all documentation required by the other State, along with any subsequent modifications of the support order. If the requesting agency learns that a hearing has been scheduled in the forum jurisdiction, it must notify the custodial parent as to the date, time, and place of the hearing, and of his or her right to attend the hearing.

On receiving the request for income withholding and the accompanying documentation, the forum State's income withholding agency will "enter" the support order. Entry of a sister State's support order under the Act is the cornerstone of the interstate withholding procedure. Once the order is entered, it is enforceable by the forum State's own income withholding law with some specific, minor modifications to accommodate interstate needs. A support order "entered" in the agency or court essentially becomes an order of the forum State for the sole and limited purpose of obtaining income withholding.

The following documentation is required for the entry of a support order of another jurisdiction:

- A certified copy of the support order with all modifications
- A certified copy of an income withholding order or notice, if any, still in effect
- A copy of the portion of the rendering State's income withholding statute that sets forth the income withholding requirements under the law of that State
- A sworn statement by the custodial parent or certified statement of the agency regarding the arrearages and the assignment of support rights, if any
- A statement of:
    - The name, address, and Social Security number of the obligor, if known
    - The name and address of the absent parent's employer or of any other source of income derived in the forum State
    - The name and address of the agency or person to whom support payments shall be transmitted.

The Model Act requires the forum State agency to take steps to correct faulty or incomplete documentation without returning it to the requesting agency, when possible. This should limit unnecessary delays and advance Congress' intent that income withholding be effected expeditiously. In addition to providing for correction of errors, the Act requires the agency and court to accept or process documents which are correct in substance but not form.

On the day the out-of-State support order is entered under this procedure, notice of the proposed withholding must be sent to the obligor. The notice should be served according to usual State practice. The notice must alert the absent parent to the proposed withholding, must state that the withholding is based on an out-of-State order, and must alert the obligor to the procedures to follow to contest the withholding.

The Child Support Enforcement Amendments of 1984 provide an exception for those States that were operating an income withholding system prior to the enactment of the 1984 Amendments. These States need not meet the advance notice requirements of the Amendments so long as their existing procedures meet constitutional due process requirements.

If the absent parent requests a hearing, the forum State agency must notify the requesting agency. The Model Act provides a limited form of hearing, more informal than a full trial. The only defenses which the absent parent may assert are mistakes of fact i.e., that he or she is not the absent parent or that the amount of the arrearage is incorrect.

If the absent parent does not request a hearing, or if a hearing is held and the court or agency determines that withholding is proper, it issues an income withholding order or notice to the absent parent's employer or other payor. Income withheld in interstate cases is to be paid to the income withholding agency of the forum State, which in turn will forward it to the requesting agency or person. The forum State also may use a different entity such as a private agency or bank to collect and disburse support payments.

If the rendering State modifies a support order entered in the forum State, the forum State must take the necessary steps to modify the amounts withheld accordingly. Conversely, the agency in the forum State must notify the requesting agency when the obligor's source of income has shifted to yet another State. When there has been a shift of a source of income within the forum State (e.g., if the obligor gets a new job), the forum State agency will take necessary steps to obtain withholding against the new source of income. The task of identifying new income is facilitated by the requirement that employers notify the agency of any change in the obligor/employee's status, including the name and address of a new employer, if known.

"Straight" URESA Proceedings

Unfortunately, income withholding will not be possible in all interstate cases. The absent parent may not have identifiable income to withhold; however, the parent may be self-employed or may have property within the state In these instances, proceedings under URESA are necessary unless the would-be responding State has an administrative process. This type of proceeding is referred to as a "straight" URESA action to differentiate it from proceedings under the URESA registration provisions. Registration of out-of-State orders is discussed later.

As stated in Chapter 7, the URESA may be used for establishing child support orders, where no out-of-State order exists or to enforce an existing order. The procedures to be followed by initiating and responding States are similar in establishment and enforcement cases and are outlined in detail in Chapter 7.

In URESA enforcement cases the petition should be specific as to the income or other property that the responding State should garnish or attach. After the hearing in an enforcement case, the judge might order that a lien be placed on the absent parent's property within the responding State and, eventually, the property might be sold to pay the child support arrearages. Again, the exact impact of the 1984 Amendments cannot be predicted, but the expedited procedures might be employed in both URESA establishment and enforcement cases.

Although a remedy not often used, URESA also provides for the interstate criminal enforcement of support orders by assisting in the extradition of absent parents who have been charged with the crime of nonsupport in the requesting State. URESA calls for the Governor in the State where the absent parent is located to surrender the absent parent to the Governor of the State where the absent parent has been charged. The rendition is accomplished by the State's usual extradition process.

These provisions allow a State to pursue a criminal action where civil proceedings have failed. Therefore the Governor may refuse to surrender the absent parent where:

- The absent parent has prevailed in a previous support action
- The absent parent currently is complying with an existing support order.

Registration

The U.S. Constitution provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."[1] The U.S. Supreme Court has held that only *final* orders are entitled to full faith and credit, and if the judgment is subject to modification in the State of rendition, it is not a final judgment. Therefore, a court in a forum state may modify a child support order of a sister State to the same extent the sister State could modify it.

Many States distinguish between arrearages and payments of future installments. Out-of-State orders regarding future support payments are generally subject to modification if there is a change of circumstances. Orders concerning past-due support generally cannot be modified retroactively. There is a presumption that the past-due amount is final, and unless the presumption is rebutted, the order is entitled to full faith and credit as to that amount.

The Uniform Enforcement of Foreign Judgments Act

The Uniform Enforcement of Foreign Judgments Act, which has been adopted in 19 States, gives detailed procedures for seeking enforcement of another jurisdiction's judgment, as follows:

- The judgment creditor files an authenticated copy of the foreign judgment with the clerk of the court in the forum State.
- The clerk of the court sends notice of the filing to the judgment debtor.
- The judgment may be enforced as any other judgment of the forum State after a certain period of time has elapsed.

- The judgment debtor may receive a stay of execution of the foreign judgment if he or she can show that an appeal has been taken in the rendering State.

With this procedure or some other procedure adopted by a particular State, valid judgments, including those for child support, are entitled to full faith and credit.

Registration of Foreign Child Support Orders Under URESA

Even if a support order is not entitled to full faith and credit, it still may be registered and enforced under URESA. URESA establishes the following procedure for the registration of foreign support orders:

- The person wishing to register the order must send to the clerk of the court:
  - Three copies of the order to be registered
  - A copy of the URESA law of the State that rendered the order
  - A statement verified and signed by the person, indicating the last known address of the absent parent, the amount unpaid, the description and location of the absent parent's property subject to execution, and a list of States in which the order is registered.
- The clerk must then docket the case and notify the absent parent.
- The absent parent has 20 days to petition the court to vacate the order or stay the enforcement.
- On registration, the order has the same effect as any other support order issued by the registering State.[8]

The registration procedure offers the child support enforcement agency at least five advantages over other alternatives. First, the statute allows for registration of orders that are not entitled to full faith and credit. Second, registration is very fast. The order is registered and enforcement proceedings may begin upon filing in the obligor's State. Third, the obligor's defenses are limited. Fourth, registration is available to reach the obligor's property that is located in a State other than the State in which he or she resides. Fifth, the obligor does not automatically obtain a redetermination of his support obligation, as is the case with "straight" URESA proceedings.

Balanced against these significant advantages are two significant disadvantages. First, the procedure is rarely used and court personnel are often unaware of the procedure to register an out-of-State order. The second problem is more significant and has led many attorneys in the Child Support Enforcement Program to forsake the use of the URESA registration procedure. By registering an out-of-State order, the custodial parent may become subject to the jurisdiction of the registering court and the court may modify the order.

Requests for Enforcement of an Existing Order

Sometimes an order already exists in the State where the absent parent resides. Federal law requires that each State cooperate in the enforcement of an existing child support order.

Petition in Federal Court

The District Courts of the United States have jurisdiction to hear and determine any civil action certified by the Secretary of DHHS. Certifications must be requested by a State IV-D agency and must include evidence of the following:

- The State in which the absent parent resides has not tried to enforce an existing order against the absent parent within 60 days of receipt of the request by the originating State.
- Use of the U.S. District Court is the only reasonable method of enforcing the order.

As a condition to obtaining certification from DHHS, the IV-D agency of the initiating State must give the IV-D agency of the responding State, a "30-day warning" of its intent to seek enforcement in Federal court. Such warning must be given no sooner than 60 days after first seeking assistance in enforcing the order. If the initiating State receives no response within the 30-day limit or if the response is unsatisfactory, the initiating State may apply to its OCSE Regional Office for certification. Upon certification of the case, a civil action may be filed in the District Court. The Federal court option is available only where there already exists a child support order in the initiating State.

Federal Tax Refund Interception

In interstate cases, the submitting State must notify any other State involved in enforcing the order, both on submittal to OCSE and on receipt of the refund from the IRS. The requirements regarding notice to the absent parent are essentially the same as for intrastate cases. The most significant procedural change pertains to the administrative review process. The submitting State must provide the absent parent an opportunity for review. If the complaint cannot be resolved by the submitting State and if the absent parent requests a review in the other State, the submitting State must provide the other State with all necessary information, including a copy of the order and all subsequent modifications, a copy of the payment record or the custodial parent's affidavit, and, in non-AFDC cases, the custodial parent's current address. The rendering State must schedule the review; notify the absent parent and, in non-AFDC cases, the custodial parent; conduct the review; and make a decision within 45 days of receiving the referral from the submitting State. If the review results in a deletion of or decrease in the amount referred for intercept, the rendering State must notify OCSE within timeframes established by OCSE. The submitting State is bound by the rendering State's decision and must refund promptly any amount intercepted in error.

Other Alternatives

In most cases it will be possible for the IV-D agency to enforce an obligation by relying on interstate wage withholding, straight URESA actions, or some form of registration. Unfortunately, a few cases will require a different approach. If an order exists, it may be possible for the IV-D agency to avoid the interstate process entirely by locating an asset of the obligor, such as wages, that can be reached within the State, and garnishing them. Generally, it will be possible to refer the case to the IRS for "full collection." If the crime exists in the State, it is possible to file felony nonsupport charges against the absent parent and get a warrant issued and placed in the interstate computer network maintained by law enforcement agencies. The case also can be certified to the IRS for interception of the absent parent's Federal tax refund.

OUTCOMES OF ENFORCEMENT PROCEDURES

This chapter has provided an overview of the many techniques that can be applied to the enforcement of child support obligations when absent parents do not voluntarily comply. The choice of technique depends on many factors, such as enabling legislation, agency policies and procedures, amounts of arrearages, location status, and resources held by the obligated parent. For more detail on how orders are enforced in a particular State or program, it is necessary to review the laws and regulations that guide that program.

In all cases where enforcement is established, the child support enforcement agency has succeeded in its primary duty. The only remaining task is monitoring the payments on the support order. This last responsibility is discussed in the next chapter.

FOOTNOTES

/1/ 45 CFR 303.100(b).

/2/ 45 CFR 303.100(d)(1)(ix).

/3/ Ore.Rev.Stat. sec. 107.095(2) (1979); Neb.Rev.Stat. sec. 42.369 (1972).

/4/ P.L. 97-248; 42 USC 665.

/5/ 33 CFR 54.05(b).

/6/ Model Interstate Income Withholding Act With Comments (Washington, DC: Child Support Projects of the American Bar Association and National Conference of State Legislatures, 1984), pp. 3-1 through 3-25.

/7/ U.S. Const., Art. IV.

/8/ W. Brockelbank and F. Infausto, Interstate Enforcement of Family Support (2nd ed., 1971), pp. 77-87.

CHAPTER 9

Collection and Distribution of Child Support

INTRODUCTION

When an absent parent is legally obligated to pay child support, the order establishes the amount to be paid, the schedule of payments, the method of payment, and where payments are to be sent or presented. This chapter provides an overview of the actual processes used to receive and distribute payments for the support of dependent children.

The child support collection and distribution functions generally consist of the following activities: collecting child support payments; matching these payments to the correct cases; distributing the AFDC and disbursing the non-AFDC child support collections; billing the absent parent; and monitoring the payments made on each case. In many child support enforcement agencies, these functions are handled by a specialized unit of workers whose duties may include the following:

- Receipt of payments
- Matching payments to cases and absent parent accounts
- Posting or crediting payments to the accounts
- Distributing and disbursing funds
- Accounting for all funds received and disbursed
- Preparing and sending monthly billing notices
- Preparing and sending delinquency notices
- Maintaining all payment records
- Preparing reports.

This chapter explains the general concepts of collection and distribution to give the reader a basic understanding of the process and an appreciation of its complexity. However, because the details of the process differ from State to State, the discussion must be supplemented with specific State policies and procedures to be relevant in a particular instance.

COLLECTING CHILD SUPPORT PAYMENTS

Court and administrative orders to pay child support often include explicit information about the method of payment. Although the particulars vary from State to State, most absent parents submit their payments either to the court where the order was obtained or the agency through which enforcement and collection actions were taken.

Most child support payments are received in the form of money order, personal check, or certified cashier's check; however, some agencies accept cash payments presented in person to the court cashier or child support collection specialist. Other States have begun accepting credit card payments, which can be taken over the phone. Payments that result from wage withholding, garnishment proceedings, or sale of property may be submitted by someone other than the absent parent but are paid on behalf of that parent. The money is generally deposited into the agency's trust account.

All payments should be identified clearly. One method is to use the absent parent's Social Security number as an account number. This works well unless the absent parent is obligated by more than one support order. In these cases, more information is required to ensure proper credit for payments. If the absent parent makes one undesignated payment and the payment is insufficient to cover all the court orders in full, the payment is usually attributed equally to all obligations. Payment books and billing notices also provide good identifying tools.

After the amount of the required monthly support obligation has been computed and the order(s) it belongs to identified, then amounts received for that case for the entire month are separated into amounts that represent payment of the required monthly support obligation for the current month and amounts that represent payments on the support obligation for prior periods (if any excess amounts are collected).

There may be infrequent occasions when payments are received that the absent parent does not owe. For example, the absent parent may not realize that his or her child has reached the age of majority and that no current, past, or future obligation exists. In such cases, the payments are labeled invalid and are returned to the absent parent with an explanation. The case is then closed.

A record of all support payments is maintained that shows when payments were made, the amounts of payments, the method of payment (e.g., wage withholding, garnishment, personal check), and any arrearages that have accumulated. Because these records are critical to the enforcement of obligations, they should be updated regularly. The increased availability of computerized record-keeping systems has simplified the process of tracking and modifying the record.

DISTRIBUTING CHILD SUPPORT PAYMENTS

The distribution of child support payments is a complex process. The method depends on whether the absent parent's child currently is receiving AFDC benefits. AFDC and non-AFDC distribution processes are discussed below.

AFDC Cases

As noted in the discussion of intake in Chapter 3, when custodial parents apply for public assistance, they must assign to the State all rights to child support. In these cases, absent parents should pay their support obligations directly to the court clerk or child support enforcement agency. As a result, the absent parent becomes financially liable for the expenses a State incurs in providing public assistance to his or her children.

The State IV-D agency notifies the State IV-A agency when support is collected on an AFDC case. The IV-A agency reviews this information to determine if the family continues to be eligible for AFDC payments.

If an AFDC case is closed, collection efforts will continue to be made by the agency and payments received will be transferred to the family for 5 months; after that time, the absent parent is required to pay support directly to the family, unless the custodial parent authorizes the IV-D agency continue collection efforts. It is often in the best interest of the custodial parent to allow the agency to continue receiving and distributing collections; this process ensures a documented payment history, which could be used later in court or administrative enforcement actions.

Section 457(b)(1) of the Social Security Act provides that the first $50 of child support collected that represents monthly support payments is to be paid directly to the AFDC family without any reduction in benefits. This provision of the law is intended to provide additional support for the children and may encourage the family to assist the State child support agency in the collection of child support payments through providing current information on the whereabouts of the absent parent or other data helpful for collection purposes.

These processes are more easily grasped by following hypothetical cases through the individual steps. For example, if a mother with two children applied for assistance, she would be required to assign her rights to support payments over to the State agency as a condition of eligibility for AFDC. If other eligibility conditions are met, the family would receive public assistance payment under the State's AFDC program.

Assume that this family's AFDC payment amounted to $350 per month and that the absent parent had a support obligation of $100 per child, or $200 per month. Distribution would occur as follows: the family receives $50, while the balance of $150 is distributed between the State and Federal Governments in the same ratio that each participated in the payment of AFDC. For example, if this ratio is 50 percent Federal funds and 50 percent State funds, then $75 would be credited to the Federal Government and $75 would be credited to the State Government. This distribution would be affected also by Federal incentives, which reward States for successful collection efforts; these are discussed in detail later in this chapter.

If the support order requires the absent parent to make payments in excess of the grant amount (for our example, assume a support order of $200 per child, or $400 per month), the family receives $50 and the balance of $350 is distributed between the State and Federal Governments in the same ratio that each participated in the payment of AFDC.

Non-AFDC Cases

For non-AFDC cases the process differs significantly. First, the child support agency cannot require an assignment of support rights as a condition of eligibility for collection services.

In some situations a custodial parent will have been on public assistance prior to receiving payments on a support order. The absent parent in these cases will have incurred a debt to the State in the amount of public assistance expended on his or her family over the period of time in which the family was receiving AFDC. The State has a right to require these absent parents to pay arrearages and to withhold a stipulated portion of each monthly payment in addition to current support until the arrearage is satisfied. For example, if an absent parent is paying $200 per month for two children, the court or administrative agency may require an additional $50 per month for 2 years to satisfy an arrearage of $1,200, more if interest is considered. Once the arrearage is satisfied, the absent parent would be responsible only for the $200 in child support per month.

MONITORING COLLECTION AND DISTRIBUTION

Federal law dictates that States keep careful records of incoming and outgoing payments. In addition, new Federal regulations require that the child support enforcement agency send an annual notice to each AFDC recipient informing them of collections made in their case. These records of child support payment histories must be absolutely accurate. Delinquency notices or reports to custodial parents with incorrect amounts damage the program's credibility. Also, enforcement efforts may become more difficult if the agency does not have records on which it can rely for evidence in court hearings.

The principles for effectively monitoring child support payments are outlined below:

- Consistent attention given to cases
- Cases monitored regularly
- Procedures established that define actions to be taken on delinquent cases
- Special attention given to cases with newly established orders to prevent an absent parent from developing poor paying habits
- Explanations provided to absent parent about possible repercussions for nonpayment
- Follow through on the actions taken if the parent fails to send the payment
- Accurate payment records reflected in any bills or notices issued.

In addition, an agency should automate monitoring and collection efforts as much as possible to free staff for other functions. States may elect to use an automatic billing process similar to those used by commercial enterprises that offer various types of credit or charge account privileges. In this kind of system, bills are issued regularly to remind absent parents of each payment. An automated system must be consistently updated to avoid issuing bills on closed cases, in incorrect amounts, or to addresses that are no longer current. An automatic billing system has a number of advantages:

- It provides a regular reminder of payments due.
- The system can be fully automated to eliminate manual monitoring.
- Return mailers identify cases and reduce unidentifiable payments.
- Documentation of collections improves legal enforcement of delinquent cases.
- Address changes are identified promptly.

Automated billing systems may be expensive to establish and maintain and, therefore, may not be a viable option for some child support enforcement offices. A less-expensive system is to provide absent parents with payment booklets (multicopy sheets that are separated to provide a receipt and proved payment identification) and self-mailers that form envelopes for receipt of payment. In addition, if requested on the envelope, the post office will notify the agency of any changes of address.

INTERSTATE COLLECTION AND DISTRIBUTION

As provisions for interstate enforcement have improved, it has become more and more difficult for absent parents to avoid making support payments by relocating across a county or State line. Not only have enforcement procedures improved, but collection strategies based on interstate cooperation have as well. States are working together as well as independently to provide the services they have been chartered to provide. The result has been quite positive.

Support payments in interstate cases usually are collected by the court clerk in the responding State for transmission to the court in the initiating State. This clerk forwards payments to the court clerk in the initiating State, who distributes the collection to the family or, for AFDC cases, to the child support enforcement agency.

The court intends child support payments to be available to meet the children's needs as those needs arise. Thus, it is very important that the court in the responding State transmit collections as quickly and as regularly as possible. Federal regulations require collections to be transmitted to the initiating State within 10 days of receipt of the collection. It also is important that payments in AFDC cases be forwarded to the initiating State in a timely manner to facilitate monitoring and to allow for monthly redetermination of eligibility, which must occur when support obligations are being paid by the absent parent.

INCENTIVES

Federal regulations have established incentive programs to reward child support agencies for successfully collecting child support. Before distributing the Federal share of collection support as a credit for Federal funds paid out on AFDC, the State deducts a percentage from that credit as an incentive payment. It is the State's responsibility to maintain accurate records to substantiate incentives payments due and paid to the State or local agency or, in interstate child support cases, to another State.

The Child Support Enforcement Amendments of 1984 significantly changed the Federal incentive program by linking incentives to program cost-effectiveness. Effective October 1, 1985, States will receive an incentive minimum of 6 percent for both AFDC and non-AFDC collections. These percentages can increase to as much as 10 percent for both categories for very cost-effective States. The 1984 Amendments [Sec. 458(b)(3) of the Social Security Act] also provide that the portion of the incentive payment paid to a State for non-AFDC collections may not exceed the portion paid the State for AFDC collections in FY 1986 and FY 1987. However, in FY 1988, the non-AFDC portion can equal 105 percent of the AFDC incentive; in FY 1989, it can equal 110 percent; and for FY 1990 and thereafter it can equal 115 percent. In addition, the new legislation allows both States involved in an interstate case to take credit for the collection when reporting total collections for the purpose of calculating cost-effectiveness and incentives.

OUTCOMES OF THE COLLECTION AND DISTRIBUTION FUNCTIONS

This chapter has outlined procedures found to be effective in collecting and distributing child support payments. As mentioned in the beginning of this chapter, these suggestions will need to be modified or supplemented with the policies and resources of individual agencies.

It is in the best interests of the State child support enforcement agency to monitor these functions carefully. Besides helping to satisfy the needs of children, the State's success will secure incentive payments from the Federal Government, prepare the agency for its audit, and strengthen its reputation as an effective, powerful collection service.

APPENDIX

Legislative History Of Child Support Enforcement

1950

Congress passed the first Federal child support enforcement legislation by adding Section 402(a)(11) to the Social Security Act [42 USC 602(a)(11)], requiring State welfare agencies to notify appropriate law enforcement officials upon providing Aid to Families with Dependent Children (AFDC) with respect to a child who was abandoned or deserted by a parent.

Also that year, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the Uniform Reciprocal Enforcement of Support Act (subsequent amendments to this Act were approved in 1952, 1958, and 1968).

1965

Public Law (P.L.) 89-97 allowed a State or local welfare agency to obtain from the Secretary of Health, Education, and Welfare the address and place of employment of an absent parent who owed child support under a court order for support.

1967

P.L. 90-248 allowed States to obtain from IRS the addresses of absent parents who owed child support under a court order for support. In addition, each State was required to establish a single organizational unit to establish paternity and collect child support for deserted children receiving AFDC. States were also required to work cooperatively with each other under child support reciprocity agreements and with courts and law enforcement officials.

1975

After 3 years of Congressional attention to child support enforcement issues, P.L. 93-647 was signed into law on January 4, 1975, creating, inter alia, Part D of Title IV of the Social Security Act [Sections 451, et seq.; 42 USC 651, et seq.]. The child support enforcement provisions of P.L. 93-647 are, in brief, as follows:

- The Secretary of the Department of Health, Education, and Welfare (now DHHS) has primary responsibility for the Program and is required to establish a separate organizational unit to operate the program. Operational responsibilities include (1) establishing a parent locator service; (2) establishing standards for State program organization, staffing, and operation to assure an effective program; (3) reviewing and approving State plans for the program; (4) evaluating State program operations by conducting audits of each State's program; (5) certifying cases for referral to the Federal courts to enforce support obligations; (6) certifying cases for referral to the IRS for support collections; (7) providing technical assistance to States and assisting

- Primary responsibility for operating the Child Support Enforcement Program is placed on the States pursuant to the State plan. The major requirements of a State plan are that (1) the State designate a single and separate organizational unit to administer the program; (2) the State undertake to establish paternity and secure support for individuals receiving AFDC and others who apply directly for child support enforcement services; (3) child support payments be made to the State for distribution; (4) the State enter into cooperative agreements with appropriate courts and law enforcement officials; (5) the State establish a State parent locator service that uses State and local parent location resources and the Federal Parent Locator Service; (6) the State cooperate with any other State in locating an absent parent, establishing paternity, and securing support; and (7) the State maintain a full record of collections and disbursements made under the plan.

- Procedures were set out for the distribution of child support collections received on behalf of families receiving AFDC.

- Incentive payments to States for collections made on AFDC cases were created.

- Monies due and payable to Federal employees became subjected to garnishment for the collection of child support.

- New eligibility requirements were added to the AFDC program, which required each applicant for, or recipient of, AFDC to make an assignment of support rights to the State; to cooperate with the State in establishing paternity and securing support; and to furnish his or her Social Security number to the State.

The effective date of P.L. 93-647 was to be July 1, 1975, except for the provision regarding garnishment of Federal employees, which became effective on January 4, 1975. However, several problems were identified prior to the effective date, and Congress passed P.L. 94-46 to extend the effective date to August 1, 1975. In addition, P.L. 94-88 was passed in August 1975 to allow States to obtain waivers from certain program requirements under certain conditions until June 30, 1976, and to receive Federal reimbursement at a reduced rate. This law also eased the requirement for AFDC recipients to cooperate with State child support enforcement agencies when such cooperation would not be in the best interests of the child. It also provided for supplemental payments to AFDC recipients whose grants would be reduced due to the implementation of the child support enforcement program.

1976

Effective October 20, 1976, State employment agencies were required to provide absent parents' addresses to State child support enforcement agencies (P.L. 94-566).

1977

P.L. 95-30, effective May 23, 1977, made several amendments to Title IV-D:

- Provisions relating to the garnishment of a Federal employee's wages for child support were amended to (1) include employees of the District of Columbia; (2) specify the conditions and procedures to be followed to serve garnishments on

Federal agencies; (3) authorize the issuance of garnishment regulations by the three branches of the Federal Government and by the District of Columbia; and (4) define further certain terms used.

- Section 454 of the Social Security Act (42 USC 654) was amended to require the State plan to provide bonding for employees who receive, handle, or disburse cash and to insure that the accounting and collection functions be performed by different individuals. The incentive payment provision, under section 458(a) of the Social Security Act [42 USC 658(a)], was amended to change the rate to 15 percent of AFDC collections (from 25 percent for the first 12 months and 10 percent thereafter).

The Medicare-Medicaid Antifraud and Abuse Amendments of 1977 (P.L. 95-142), effective on October 25, 1977, established a medical support enforcement program, under which States could require Medicaid applicants to assign to the State their rights to medical support. State Medicaid agencies were allowed to enter into cooperative agreements with any appropriate agency of any State, including the IV-D agency, for assistance with the enforcement and collection of medical support obligations. Incentives were also available to localities making child support collections for States and for States securing collections on behalf of other States.

1978

The Bankruptcy Reform Act of 1978 (P.L. 95-598), signed into law on November 6, 1978, repealed section 456(b) of the Social Security Act [42 USC 656(b)], which had barred the discharge in bankruptcy of assigned child support debts. The Federal Bankruptcy Act was repealed as of October, 1, 1979, and replaced by a new uniform law on bankruptcy. Section 456(h) of the Social Security Act was reenacted by section 2334 of P.L. 97-35.

1980

Section II of P.L. 96-178 extended until March 31, 1980, Federal Financial Participation (FFP) for non-AFDC services, retroactive to October 1, 1978.

The Social Security Disability Amendments of 1980 (P. L. 96-265) were signed into law on June 9, 1980, increasing Federal matching funds to 90 percent, effective July 1, 1981, for the costs of developing, implementing, and enhancing approved automated child support management information systems. Federal matching funds were also made available for child support enforcement duties performed by certain court personnel. In another provision, the law authorized the use of the IRS to collect child support arrearages on behalf of non-AFDC families. Finally, the law provided State and local IV-D agencies access to wage information held by the Social Security Administration and State employment security agencies for use in establishing and enforcing child support obligations.

The Adoption Assistance and Child Welfare Act of 1980 (P. L. 96-272) contained four amendments to Title IV-D of the Social Security Act. First, the law made FFP for non-AFDC services available on a permanent basis. Second, it allowed States to receive incentive payments on all AFDC collections as well as interstate collections. Third, as of October 1, 1979, States were required to claim reimbursement for expenditures within 2 years, with some exceptions. The fourth change postponed until October, 1980, the imposition of the 5 percent penalty on AFDC reimbursement for States not having effective child support enforcement programs.

1981

The Omnibus Reconciliation Act of 1981 (P.L. 97-35) added five amendments to the IV-D provisions. First, IRS was authorized to withhold all or a part of certain individuals' Federal income tax refunds for collection of delinquent child support obligations. Second, IV-D agencies were required to collect spousal support for AFDC families. Third, for non-AFDC cases, IV-D agencies were required to collect fees from absent parents who were delinquent in their child support payments. Fourth, child support obligations assigned to the State no longer were dischargeable in bankruptcy proceedings. Finally, the law imposed on States a requirement to withhold a portion of unemployment benefits from absent parents delinquent in their support payments.

1982

The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) was signed into law on September 3, 1982, and included the following provisions, affecting the IV-D program:

- FFP was reduced from 75 to 70 percent, effective October 1, 1982. Incentives were reduced from 15 to 12 percent, effective October 1, 1983. The provision for reimbursement of costs of certain court personnel that exceed the amount of funds spent by a State on similar court expenses during calendar year 1978 was repealed.

- The mandatory non-AFDC collection fee imposed by P.L. 97-35 was repealed, retroactive to August 13, 1981. P.L. 97-248 allowed States to elect not to recover costs or to recover costs from collections or from fees imposed on absent parents. Another provision allowed States to collect spousal support in certain non-AFDC cases.

- As of October 1, 1982, members of the uniformed services on active duty are required to make allotments from their pay when support arrearages reach the equivalent of a 2-month delinquency.

- Also beginning October 1, 1982, States were allowed to reimburse themselves for AFDC grants paid to families for the first month in which the collection of child support is sufficient to make a family ineligible for AFDC.

The Omnibus Budget Reconciliation Act of 1982 (P.L. 97-253), effective September 8, 1982, provided for the disclosure of information obtained under authority of the Food Stamp Act of 1977 to various programs, including State child support enforcement agencies.

Title X of the Uniformed Services Former Spouses' Protection Act (P.L. 97-252), signed into law on September 8, 1982, treats military retirement or retainer pay as property to be divided by State courts in connection with divorce, dissolution, annulment, or legal separation proceedings.

1984

The key provisions of P.L. 98-378, the Child Support Enforcement Amendments of 1984, require critical improvements to State and local child support enforcement programs in four major areas:

- Mandatory Practices

All States must enact statutes providing for the use of improved enforcement mechanisms, including (1) mandatory income withholding procedures; (2) expedited processes for establishing and enforcing support orders; (3) State income tax refund interceptions; (4) liens against real and personal property; (5) security or bonds to assure compliance with support obligations; and (6) reports of support delinquency information to consumer reporting agencies. In addition, State law must allow for the bringing of paternity actions any time prior to a child's eighteenth birthday and all support orders issued or modified after Octover 1, 1985, must include a provision for wage withholding.

- Federal Financial Participation and Audit Provisions

The law encourages greater reliance on performance-based incentives by reducing Federal matching funds by 2 percent in Federal fiscal year 1988 (to 68 percent) and another 2 percent in fiscal year 1990 (to 66 percent). Federal matching funds at 90 percent are available for the development and installation of automated systems to improve required procedures, and, for the first time, computer hardware purchases can be matched at this higher rate.

Starting October 1, 1985, States will receive an incentive minimum of 6 percent for both AFDC and non-AFDC collections. These percentages can increase to as much as 10 percent for both categories for very cost-effective States, but a State's non-AFDC incentive payments are limited by the amount of incentives received for AFDC collections. The law further requires States to pass incentives through to local child support enforcement agencies where these agencies have participated in the costs of the program.

The Act replaces current annual State audits with audits conducted at least once every 3 years and alters their focus from compliance based to comprehensive performance based. Penalties for noncompliance will be modified to a graduated penalty of 1 to 5 percent of the Federal share of the State's AFDC funds. The Act also allows the Federal government to suspend imposition of a penalty based on a State's filing of, and complying with, an acceptable corrective action plan.

- Improved Interstate Enforcement

The proven enforcement techniques discussed above must be applied to interstate cases as well as intrastate cases. Both States involved in an interstate case will be allowed to take credit for the collection when reporting total collections for the purpose of calculating incentives. In addition, the law authorizes special demonstration grants beginning in fiscal year 1985, to be made available to States to fund innovative methods of interstate enforcement and collection. Federal audits will also focus on States' effectiveness in establishing and enforcing obligations across State lines.

- Equal Services for Welfare and Nonwelfare Families

The Act amends section 451 of the Social Security Act to provide that Congress, by creating the Child Support Enforcement Program, intended to aid both nonwelfare and welfare families. In addition, the Act contains several specific requirements directed at improving State services to nonwelfare families. All of the mandatory practices discussed above must be made available for both classes of cases; the interception of Federal income tax refunds is extended to nonwelfare cases; incentive payments for nonwelfare cases will be available for the first time; when families are terminated from the welfare rolls, they automatically must receive nonwelfare support enforcement services without being charged an application fee; and States must publicize the availability of nonwelfare support enforcement services.

- Other Provisions

  In addition to those provisions identified above, the Act requires that States (1) collect support in certain foster care cases; (2) collect spousal support in addition to child support where both are due in a case; (3) notify AFDC recipients, at least yearly, of the collections made in their individual cases; (4) establish State commissions to examine, investigate, and study the operation of the State's child support system and report findings to the State's governor; (5) formulate guidelines for determining appropriate child support obligation amounts and distribute the guidelines to judges and other individuals who possess authority to establish obligation amounts; (6) offset the costs of the program by charging various fees to nonwelfare families and to delinquent absent parents; (7) allow families whose AFDC eligibility is terminated as a result of the payment of child support to remain eligible to receive Medicaid for 4 months; and (8) seek to establish medical support orders in addition to monetary awards. In addition, the Act also makes the Federal Parent Locator Service more accessible and effective in locating absent parents. Sunset provisions are included in the extension of Medicaid eligibility and Federal tax offsets for non-AFDC families.

GLOSSARY

Absent Parent	Any individual who is absent from the home and is legally responsible for providing financial support for a dependent child.
Abstract of Judgment	An official, certified copy of a court judgment that states the names of the parties in the case, the amount of the judgment the judge who rendered the judgment, or the court in which it was rendered.
Acknowledged Father	The natural father of a child born out of wedlock for whom paternity has been established by admission or stipulation.
Action	An ordinary proceeding in a court by which one party prosecutes another.
Adjudication	The entry of a judgment or decree by a judge after all claims of the parties have been heard and a verdict returned.
Administrative Agency	An agency of the sovereign power charged with administering particular legislation. Examples are compensation and industrial commissions, such as the Federal Trade Commission and the Interstate Commerce Commission.
Admission	A voluntary or implied acknowledgment, confession, or concession of the existence of a fact or the truth of an allegation made by a party to the case.
Administrative Determination Of Support	A support obligation arrived at as a result of the administrative process.
Administrative Enforcement	Powers granted to a State agency by statutes that allow for the attachment and execution outside the judicial system on a responsible parent's assets.
Administrative Law	The branch of public law that deals with the limits placed on the powers and actions of administrative agencies. It is concerned with such topics as the collection of revenue, public safety, morals, poor laws, and police.
Administrative Process	A quasi-judicial system set up in a State agency by statute for the purpose of setting and enforcing child support obligations.

Affidavit	A voluntary or implied acknowledgment, confession, or concession of the existence of a fact or of the truth of an allegation made by a party to the case.
Agent	A person authorized by another to act for him or her; a substitute or a deputy, appointed by a person and given discretionary power to act in his or her behalf.
Aid	Aid to Families with Dependent Children, emergency assistance, or AFDC/foster care.
Aid to Families With Dependent Children (AFDC)	A category of public assistance paid on behalf of children who are deprived of one or both of their parents by reason of death, disability, or continued absence (including desertion) from the home.
Allegation	The assertion, declaration, or statement of a party to a case, made in pleading, setting out what is expected to be proved.
Alleged Father	A person who has been named as the father of a child born out of wedlock, but for whom paternity has not been established.
Allele	One of two or more genes that determine alternative characters in inheritance and are located at the same locus on homologous chromosomes.
Answer	A pleading by the defendant in a civil case that contests or admits the plantiff's allegations of facts set forth in the complaint.
Antibody	A specific gamma globulin that appears in the plasma, serum, or other body fluids as a result of antigenic stimulation and reacts specifically with that antigen in some observable classes of antibodies: Immune - an antibody that is produced in response to the exposure to blood either through blood transfusions or as a result of pregnancy. Natural - an antibody that is present without history of any "outside antigenic stimuli" such as exposure to blood (i.e., Anti-A or Anti-B).
Appeal	The request of a party to a higher court to review the rulings made in a lower court for possible errors that would justify overruling the lower court's judgment and perhaps granting a new trial.
Applicant	The caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.
Arrearage	The total unpaid support obligation owed by a responsible person.

Assignment	An eligibility requirement for AFDC whereby the applicant/recipient must assign to the State all rights he or she may have in their own behalf or in behalf of a dependent child.
Assistance	Support money or goods granted to a person or family based on income.
Authorized Person	P.L. 93-647, sec. 452(C), defines authorized person as follows: (1) Any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child support including, when authorized under the State plan, any official of a political subdivision; (2) The court that has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and (3) The resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under Part A of this title) (as determined by regulations prescribed by the Secretary of DHHS) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.
Blood Group	Classification of blood according to antigens present or absent on the red blood cells.
Burden of Proof	The necessity or duty of affirmatively proving a fact in dispute on an issue raised between the parties.
Caretaker	The person responsible for a child's health or welfare who has temporary or legal custody of a dependent child.
Case Law	Law established by judicial decision in cases.
Certificate of Service	A signed writing by which a person who served process on a defendant vouches that the service was performed.
Certify	To vouch formally for the accuracy of facts by a signed writing.
Chromosomes	Ribbon-like structures within the cell nucleus which are the basis of heredity. The sections of the chromosome that function to produce physical characteristics are called genes. In humans, there are 23 pairs of chromosomes in each nucleated cell of the body that determine everything from hair and eye color to blood type.
Circumstantial Evidence	Evidence directed to the surrounding circumstances, whereby existence of the principal fact in issue may be inferred by the exercise of logical reasoning.

Claim	To demand as one's own; to assert, state, or insist; an allegation made in an action at law.
Comity	The practice by which courts of one State follow the decision or recognize judgments of another although they are not bound to do so; a willingness to grant a privilege to another State out of courtesy, deference, and good will.
Common Law	A body of law developed from judicial decisions based on custom and precedent.
Complainant	A person who seeks to initiate court proceedings against another person. In a civil case the complainant is the plaintiff; in a criminal case the complainant is the State.
Complaint	The formal written document filed in a court whereby the person initiating the action sets forth the names of the parties, the allegations, and the request for relief sought; the initial pleading.
Contemner	A person who has committed contempt of court.
Cooperation	AFDC applicants' appearance at State or local agencies to provide information, to appear as witnesses at court or other hearings providing information, or to comply with assignment regulations.
Corroborating Evidence	Evidence supplementary to that already given and tending to support or strengthen it.
Counsel	Attorney or attorneys for a party.
Courts of Record	Courts whose proceedings are permanently recorded by a court reporter. Courts not of record are those of lesser authority whose proceedings are not permanently recorded.
Credibility	That quality in a witness that renders his or her testimony worthy of belief.
Cross-Examination	The examination of a witness by the opposing party to test the truth of his or her testimony, to further develop it, or for other purposes.
Default	The failure of a defendant to file an answer or appear in a civil case within 20 days after having been properly served with a summons and complaint.
Defendant	In civil proceedings, the party responding to the complaint, "one who is sued and called upon to make satisfaction for a wrong complained of by another (the plaintiff)." In criminal proceedings, the accused.

Department of Health and Human Resources (DHHS)	Formerly the Department of Health, Education and Welfare.
Dependent	A person to whom a duty of support is owed.
Deposition	The testimony of a witness taken upon interrogatories not in open court, but in persuance of a commission to take testimony issued by a court, or under general law on the subject, and reduced to writing and duly authenticated, and intended to be used upon the trial of the action in court.
Deserted or Abandoned Child	Any child whose eligibility for AFDC is based on continued absence of a parent from the home (e.g., a child from a broken home or a child born out of wedlock).
Director	Director, Office of Child Support Enforcement; Secretary's designee to administer the child support enforcement program under Title IV-D.
Discovery	Pretrial procedure by which one party gains vital information concerning the case from others who have knowledge or possession of this information. It is used in preparation of the party's case. Examples are depositions and interrogatories.
Docket	A formal brief record of proceedings in court; minute entries in case files; the court calendar. Some courts refer to filing a paper with the court as docketing.
Due Process	The conduct of legal proceedings according to those rules and principles that have been established in our system of law for the enforcement and protection of civil rights. Its most essential elements are a court with proper jurisdiction over the subject matter and the defendant, notice to each party, the opportunity for each party to present evidence and to challenge the opposing party's evidence, orderly procedures, and a neutral and unbiased trier of fact who determines the facts and decides the issues only on the basis of the persuasiveness of relevant evidence properly admitted. Due process is a safeguard against unreasonable, arbitrary, and capricious decisions.
Electrophoresis	The movement of colloidal substances suspended in a fluid, caused by the application of an electrical current under controlled conditions.
Enzymes	Various proteinlike substances that act as organic catalysts in initiating or speeding up specific chemical reactions.

Equity	A system of law originating in the English Chancery and comprising a settled and formal body of legal and procedural rules and doctrines that supplement aid or override a narrow and rigid system of law.
Execution	A group of remedies that put final civil judgments into effect by the court commanding a sheriff to take certain actions such as seizing money from a defendant's bank account to pay a judgment won by the plaintiff in a trail.
Exhibit	A writing or other article marked for identification and shown to the trier of fact during a court proceeding.
Ex parte	(Lat.) Done for, in behalf of, or a judicial procedure instituted by one party, without notice to or participation by any adverse party.
Federal Parent Locator Service (FPLS)	The system devised and operated by OCSE for the purpose of searching Federal Government records to locate absent parents.
Fraud	False statements made to State officials with the intent of wrongfully receiving public assistance.
FY	Fiscal Year
Garnishee	The person upon whom a garnishment is served; (verb) to institute garnishment proceedings.
Garnishment	A legal proceeding whereby a person's (defendant's) property, money, or credit in the possession or or under the control of a third person (garnishee) is withheld from the defendant and applied to the payment of the defendant's debt to the plaintiff.
Gene	The portion of a chromosome that determines a particular trait. The unit of inheritance.
Genetic markers	A variety of structures present in the blood that carry inherited characteristics of each person's parents. They are paired: one inherited from the mother and the other from the father.
Genotype	The fundamental group constitution of an individual in terms of one's hereditary factors (e.g., A/O, CDe/cde).
Grant Amount	The amount of public assistance granted to a family.

Haplotype	A collection of antigens whose determining genes are closely grouped on a single chromosome so that they are inherited en bloc. Since an individual inherits two such groups of antigens, one from each parent, each haplotype represents half of his or her full complement (e.g., HLA-A1/B8; HLA-A2/B14).
Hearings Officer	A tribunal created by State statute to preside over an administrative hearings process.
Heterozygous	Having two different alleles at the corresponding loci of a pair of chromosomes.
Histocompatibility	A condition of compatibility between the tissue of a graft or transplant and the tissue of the body receiving it.
Homozygous	Having identical alleles at the corresponding loci of a pair of chromosomes. (Having inherited like genetic material from each parent.)
Human Leukocyte Antigen (HLA)	A complex genetic system of multiple alleles located on the surface membrane of the white blood cell (leukocyte) or other body tissue. It is also referred to as the Histocompatibility System.
Immunoglobulin	A protein found in serum or plasma that participates in the immune response as the antibody for a specific antigen.
Initial Enforcement Techniques	Methods that may be used to convince an absent parent to pay child support without involving a court of law; usually centers around personal contact and persuasive arguments.
Initiating State	The State in which a URESA proceeding is commenced and where the obligee is located.
Interest	(1) A right to have an advantage accruing from something, such as a title to a share of ownership. (2) A rate of compensation for the use or forbearance of money, such as interest on a loan; a rate of compensation that must be paid by a judgment debtor. (3) A relation to the matter in controversy, in the nature of a possible gain or loss, which might include a person such as a juror, witness, or judge to favor one party to a suit.
Interrogatories	A discovery technique where parties clarify the issues of a pending trial by submitting written questions that must be answered under oath.
Judgment	The official decision or finding of a court upon the respective rights and claims of the parties to an action; also known as a decree or order and may include the "findings of fact and conclusions of law."

Judicial Jurisdiction	The express constitutional or legislative determination of what types of cases may be heard by certain courts. Before a court has jurisdiction (i.e., for the court to invoke its authority to try a case) the legislative criteria prescribing the class of cases that may be heard must be satisfied. This criteria encompasses fixed geographical boundaries, the amount of money involved in a civil action, those parties that may lawfully be brought before the court, the types of civil claims that may be acted upon, and those criminal proceedings that may be conducted.
Judicial Remedies	A general designation for court enforcement of obligations. More specifically it relates to the functions of the judges such as contempt, stay of execution, probation, work release, withheld judgment, garnishment, and involuntary wage assignment.
Judicial Review	A reconsideration or review by a higher court of a case tried in a lower court or administrative hearing. Used especially to describe the examination of a case by an appellate court. The review is usually restricted to material error and abuse of judicial discretion.
Legal Father	A man who is recognized by law as the male parent of another person.
Lien	A remedy enacted by filing a judgment with a county recorder. It acts as an encumbrance on any real property in the county belonging to the obligor.
Material	(Referring to evidence offered at a trial.) Categorized as important, more or less necessary, having influence or effect, or going to the substantial issues in dispute.
Motion	An application to a magistrate or judge for an order or ruling.
Non-PA	Child support cases where the custodial parent is not receiving public assistance.
Notarize	The administration of an oath to a person by a public officer who then attests and certifies, by his or her signature and official seal on the document, that the person who signed the document was, in fact, the person whose name appeared thereon.
Objection	The act of a party who takes exception to some matter of proceeding in the course of a trial or hearing.
Obligation	The legal amount of support owed for the benefit of children as ordered by a court or administrative procedure.

Obligee	The person to whom a duty of support is owed.
Obligor	The person owing a duty of support.
OCSE	Office of Child Support Enforcement.
Opening Statement	A statement by a party or his attorney at the beginning of a trial whose purpose is to advise the jury of facts that will be relied on and of issues in the case in order to give the trier of fact a general picture of the facts.
Opinion	The statement by a judge or appellate court of the decision reached in regard to a case tried before them, expounding the law as applied to the case, and detailing the reasons on which the judgment is based.
Order	Every direction of a magistrate or judge to a person, made or entered in writing and not included in a judgment.
Overrule	To refuse to sustain, or recognize as sufficient, an objection made in the course of a trial.
Out-of-State Case	Any support case where one of the parties resides outside the State.
Paternity Case	An action to determine the parentage of a child born out of wedlock.
Paternity Index (PI)	A ratio (x/y) of the frequency at which the putative father (x) would be expected to produce a given set of obligatory genes, to the frequency at which a random man (y), of the same race, would be expected to produce the same set of obligatory genes. A PI of greater than 20:1 is considered strong evidence of paternity.
Payee	Caretaker other than mother or father of child.
Personal Service	Any property other than real property belonging to an individual.
Petition	A formal written request submitted to the court asking that a certain thing be done. It states facts and circumstances relied upon as a cause for judicial action and contains a formal request (prayer) for relief.
Phenotype	The inheritance characteristic of an individual that is evident from the results of tests or from direct observations. Individuals who have the same phenotype may have completely different genotypes.

Plaintiff	A person who brings an action; the party who complains or sues in a civil case.
Plasma	The liquid portion of unclotted blood. It contains, among other consitutents, the clotting factor and the antibodies that dictate one's blood type.
Plausibility of Paternity (PP)	A ratio (x/x+y) of the frequency at which the putative father (x) would be expected to produce a given set of obligatory genes, to the total frequency that the same set of obligatory genes is produced in the population. The total frequency (x+y) is the sum of the frequencies for the putative father (x) plus that of the random man (y). The final result is expressed as a percentage, and a PP greater than 95 percent is considered strong evidence of paternity.
Plea	The answer by the defendant in a criminal case to the charge brought against him or her.
Pleading	Written allegation filed with the court of what is affirmed on one side and denied on the other, disclosing to the court or jury the issue between the parties.
Pleading Practice	The process performed by the parties to an action by alternately presenting written statements of their contention. Each pleading is responsive to that which precedes, and each serves to narrow the field of controversy until the evolvement of a single point, affirmed on one side and denied on the other (called an "issue") on which the parties then go to trial.
Prayer	A request contained in a pleading that the court will grant relief requested.
Precedent	An adjudged case or decision that serves as an example or authority for an identical or similar case or similar question of law.
Preliminary Hearing or Examination	The hearing or examination given by a judge, to a person accused of a crime, to ascertain whether there is probable cause to require the commitment and holding to bail of the person accused. It is not a trial for the determination of the accused's guilt or innocence. A preponderance of evidence is all that is required to sustain the burden of proof, not beyond a reasonable doubt. The accused usually does not testify, and usually uses the hearing to test the strength of the State's case.

Preponderance of the Evidence	Evidence with a superiority of persuasion. A judge cannot properly render verdict upon evidence in favor of the one having the burden of proof, unless such evidence overbears, in some degree, the persuasiveness of the other side's evidence. This is the burden required in civil cases. A higher standard is required of the prosecution in a criminal case.
Prima Facie Case	Evidence that is legally sufficient to establish a fact or case unless disproved.
Prioritization	The classification of cases in descending order of their potential for collections. It is accomplished by isolating case characteristics and by determining their potential influence on collection success or failure.
Probable Cause	An apparent state of facts found to exist that would induce a reasonably intelligent and prudent man to believe, objectively, that the accused person committed the crime charged, or when issuing a search warrant that evidence relating to a crime is located in a particular place.
Prompt Notice	Written notice to the IV-D or IV-A agency within 2 working days of the furnishing of aid including a copy of the AFDC case record or all relevant information as prescribed by the child support agency.
Prosecutor	A public official who prosecutes a criminal case in the name of the government.
Public Assistance (PA)	Support money or goods granted to a person or family based on income.
Putative Father	Alleged father. A person who has been named as the father of a child born out of wedlock but for whom paternity has not been established.
Real Property	Land or land-related property, such as houses and buildings.
Recipient	A person who receives public assistance.
Record	A precise written history of a court action from commencement to termination designed to remain as permanent evidence of the matters to which it relates.
Red Blood Cell	A mature erythrocyte found in blood. Its primary function is to transport oxygen to all parts of the body. The antigens that determine blood type (ABO-Rh, etc.) are located extracellularly while isoenzymes (red cell enzymes) are contained intracellularly. Both are useful as determinants in assigning parentage.

Redirect Examination	Examination of a witness by the party who called the witness. It is conducted after cross-examination, to rehabilitate the witness or amplify matters discussed in cross-examination.
Regional Office	The Regional Office of Child Support Enforcement.
Regulation	A rule or order promulgated by a governmental administrative agency.
Relevancy	Quality of evidence that bears directly on a fact in issue and tends to prove the existence or nonexistence of a fact.
Reporter	(1) A person who records court proceedings for the purpose of preparing an official record thereof; (2) a commercial publication that contains judicial opinions, such as the Southeastern Reporter published by West Publishing Co.
Responding State	A State receiving and acting on an interstate child support case.
Responsible Parent	Any individual that is legally responsible to provide financial support for a dependent child.
Rule	A standard, guide, or regulation either promulgated by an entity possessing supervisory authority or accepted by tradition as principle of law.
RURESA	Revised Uniform Reciprocal Enforcement of Support Act (see URESA).
Secretary	Secretary of DHHS (formerly the Department of Health, Education, and Welfare).
Seizure	The taking of an object from its possessor or custodian by a law enforcement officer.
Serum	Plasma. The clear, liquid portion of blood, devoid of cellular material. It contains the antibodies that react with a specific antigen to characterize blood type. (ABO-rh)
Service of Process	The delivery of a writ, summons, or other notice to the party to whom it is directed for obtaining personal jurisdiction over and notice to that party.
Show Cause Order	A court order directing a person to appear and bring forth such evidence as one has to offer and reasons why the remedies stated in the order should not be confirmed or executed. A show cause order is usually based on a motion and affidavit asking for relief.
State	The individual States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

State Parent Locator Service (SPLS)	The organization in a State charged with the duty of locating absent parents for establishing or enforcing child support obligations.
State Plan	The State Plan for child support under section 454 of the Social Security Act.
Statute of Limitations	A legislative enactment that prescribes the period of time within which a civil suit must be brought upon a certain claim. In criminal law, the statute of limitations determines the time within which the State must initiate a prosecution for an offense.
Statutes	Laws enacted by legislatures; they are arranged into codes.
Stipulation	An agreement between parties through their attorneys, if any, respecting business before the court. Most stipulations are required to be in writing.
Substantive Law	Law that governs the rights, duties, and liabilities of the parties and defines the issues that the evidence must prove.
Summons	A notice to a defendant that an action against him or her has been commenced in the court issuing the summons and that, if the defendant fails to answer the complaint within a specified time, a judgment will be taken against him or her.
Title IV-A	Title IV-A of the Social Security Act is that portion of the Federal law covering the public assistance program.
Title IV-D	Title IV-D of the Social Security Act is that portion of the Federal law covering the support enforcement program.
Title IV-D Agency	A single and separate organizational unit in a State that has the responsibility for administering the State Plan under Title IV-D of the Act.
Trial de Novo	A new trial or retrial held in a higher court in which the whole case is gone into as if no trial had been held in a lower court.
Uniform Reciprocal Enforcement Support Act (URESA)	A uniform law which sets forth reciprocal legislation concerning the enforcement of support between the States. All States have passed a form of URESA.

Wage Assignment	The right of a person to transfer through automatic deductions from his or her wages money to pay some debt such as child support; the assignment may be voluntary or involuntary. In a voluntary assignment the wage earner agrees to such a withholding. In an involuntary assignment, the court orders the wage earner to assign wages or suffer a contempt finding.
White Blood Cell	Any of the small colorless cells found in the blood which are important in the body's defense mechanism against infection. They are found throughout the body, not only in blood, but also in the lymph nodes and tissue. The antigens that determine one's HLA type are found on the surface membrane of the white blood cell. (Also referred to as a leukocyte.)
Withhold and Deliver	An execution remedy ordering a third party to withhold property belonging to the obligor. The party may be required to turn the property over to the plaintiff.
Writ	An order issuing from a court and requiring the performance of a specified act or giving authority and permission to have it done.

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PUBLICATION EVALUATION

History and Fundamentals of Child Support Enforcement

SECOND EDITION

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OVER

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